

MEETING
STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

FRIDAY, OCTOBER 17, 2008

8:32 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President
Mr. Butch Hodgkins, Vice President
Ms. Lady Bug Doherty, Secretary
Mr. John Brown
Ms. Teri Rie
Ms. Emma Suarez

STAFF

Mr. Jay Punia, Executive Officer
Mr. Eric Butler, Senior Engineer
Ms. Virginia Cahill, Legal Counsel
Ms. Nancy Finch, Legal Counsel
Mr. Dan Fua, Supervising Engineer
Mr. Gary Hester, Chief Engineer
Ms. Lorraine Pendlebury, Staff Analyst
Mr. Geoffrey Shumway, Staff Analyst

DEPARTMENT OF WATER RESOURCES

Mr. Joseph Chang, Flood Maintenance Office
Mr. Russ Eckman, Chief, Sacramento Maintenance Yard
Mr. Ken Kirby, Manager, FloodSAFE Planning Portfolio

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APPEARANCES CONTINUED

DEPARTMENT OF WATER RESOURCES

Mr. Gary Lemon, Floodway Protection Section

Mr. Noel Lerner, Chief, Maintenance Support Branch

Mr. Rod Mayer, Assistant Deputy Director, FloodSAFE

Mr. Mike Miramazaheri, Chief, Bay-Delta Levees Branch

Mr. Ricardo Pineda, Chief, Floodplain Management Branch

Mr. George Qualley, Chief, Division of Flood Management

Mr. Keith Swanson, Chief, Flood Maintenance Office

Mr. Ward Tabor, Assistant Chief Counsel

Ms. Terri Wegener, Chief, Statewide Grants Branch

Mr. John Yego, Chief, Floodway Protection Section

ALSO PRESENT

Mr. David Aladjem, Reclamation District 800

Mr. Lewis Bair, Sacramento River West Side Levee District

Mr. Joe Countryman, MBK Engineers

Mr. Larry Dacus, MBK Engineers

Mr. Tom Ellis, Sacramento River West Side Levee District

Ms. Ashley Indrieri, Family Water Alliance

Mr. Donald Murphy

Mr. Dante John Nomellini, Central Delta Water Agency

Ms. Fran Peace, United States Congressman Wally Herger

Mr. Scott Shapiro, Central Valley Flood Control
Association

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APPEARANCES CONTINUED

ALSO PRESENT

Ms. Sue Sutton

Mr. Tom Teesdale

Mr. Gregg Werner, The Nature Conservancy

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and
3 gentlemen. I'd like to welcome you to the Central Valley
4 Flood Protection Board's meeting this month.

5 Mr. Punia, could you please call the roll.

6 EXECUTIVE OFFICER PUNIA: Jay Punia, Executive
7 Officer for the Central Valley Flood Protection Board.

8 Except Board Member Teri Rie and Board Member
9 Emma Suarez, the rest of the Board Members are present.

10 PRESIDENT CARTER: Thank you, Mr. Punia.

11 Item 2 on the agenda, Approval of the Minutes for
12 August 14th and 15th Board Tour/Meeting.

13 SECRETARY DOHERTY: Before you approve those, I'd
14 like to make a change to page 5, near the bottom, where it
15 says Legal Counsel Cahill. I'd like to change it to
16 "Legal Counsel Cahill supported the staff's
17 recommendation." Other than that, the minutes stand as
18 presented.

19 BOARD MEMBER BROWN: Mr. Chairman, on August
20 15th, Item No. 15. The second line down is Lester Snow,
21 not Stahl.

22 PRESIDENT CARTER: What page are you on?

23 BOARD MEMBER BROWN: I'm on the minutes of the
24 August 15th, page 13.

25 PRESIDENT CARTER: Thirteen. Lester Snow.

1 BOARD MEMBER BROWN: Yeah, the second line down.

2 PRESIDENT CARTER: Okay.

3 BOARD MEMBER BROWN: Lester might appreciate
4 that.

5 PRESIDENT CARTER: Okay, any other changes or
6 corrections?

7 Okay. We'll entertain a motion to approve as
8 corrected.

9 BOARD MEMBER BROWN: So move.

10 SECRETARY DOHERTY: Second.

11 PRESIDENT CARTER: And we have a second.

12 All those in favor indicate by saying aye.

13 (Ayes.)

14 PRESIDENT CARTER: And opposed?

15 Okay. The motion carries unanimously.

16 Item 3, Approval of the Agenda for today.

17 Are there -- I'm aware of one recommended change
18 to the agenda, which is -- we have two items on the Sutter
19 Bypass, Item 11 and Item 12. One is scheduled to be heard
20 at 11 a.m. At the request of both parties, we've asked to
21 change the order so we'd hear Item 12 first and Item 11
22 second. And considering that both items are timed, what
23 the proposal would be would be to hear Item 12 at 1 p.m.
24 and then Item 11 directly after that. So that's a
25 proposal there.

1 Are there any other suggested changes?

2 Mr. Punia.

3 EXECUTIVE OFFICER PUNIA: Item 8E on the consent
4 calendar, Permit No. 18404, DWR. The compliance with the
5 California Environmental Quality Act is not complete, so
6 staff is recommending that we postpone this permit
7 application for a future meeting.

8 VICE-PRESIDENT HODGKINS: Which one?

9 EXECUTIVE OFFICER PUNIA: 8E, Permit No. 18404.

10 PRESIDENT CARTER: Okay. Any other suggested
11 changes to the agenda for today?

12 BOARD MEMBER SUAREZ: Good morning.

13 PRESIDENT CARTER: Good morning, Emma.

14 BOARD MEMBER SUAREZ: I actually have a question
15 that relates to the agenda; and that there also would be a
16 resolution that got sent via Email a day or two ago to the
17 Board members regarding the Sutter Bypass.

18 When was that posted for the public to see? When
19 was it posted?

20 SECRETARY DOHERTY: Wednesday afternoon, was it?
21 The resolution.

22 BOARD MEMBER SUAREZ: For the public to see?

23 STAFF ASSISTANT SHUMWAY: I believe it was posted
24 Wednesday.

25 BOARD MEMBER SUAREZ: I'd like legal advise

1 regarding whether that's sufficient time notice for us to
2 be able to act on a resolution. Because it's pretty
3 detailed in its presentation.

4 LEGAL COUNSEL CAHILL: I think so long as the
5 resolution is covered by what was described in the agenda
6 item, you could.

7 BOARD MEMBER SUAREZ: Well, then I would say I
8 think we have a problem because I don't think it is. I
9 don't think the agenda as was posted talks about a
10 resolution of any sort to be considered by the Board.

11 PRESIDENT CARTER: I think what we could do on
12 that, let's consider the item, have the discussion, decide
13 whether or not a resolution is appropriate given the
14 agenda at the time and the -- and we'll act on what the
15 Board wants to do. Is that okay?

16 BOARD MEMBER SUAREZ: I'm not sure I understand.

17 PRESIDENT CARTER: We'll go ahead and -- I
18 guess -- I haven't heard a proposal in terms of changing
19 the agenda. Is there -- do you suggest that we -- is
20 there a modification to the agenda that you'd like to
21 propose, Emma?

22 BOARD MEMBER SUAREZ: I just would like to put
23 everybody on notice that I do not believe that we have
24 properly noticed the passage of a resolution regarding
25 that Item 11. We can have a discussion. We can have a --

1 SECRETARY DOHERTY: We haven't passed it.

2 BOARD MEMBER SUAREZ: I understand. But the
3 proposal, as I understand it, is that there's going to be
4 a proposal to pass a resolution that just got posted. And
5 it's a pretty detailed resolution.

6 PRESIDENT CARTER: Okay. So we can have that
7 discussion and make a decision on that when we address
8 item 11.

9 Any other suggested changes to the agenda?

10 Okay. So entertain a motion to approve the
11 agenda with the following amendments: Postponing item 8E
12 from the consent calendar and moving Item 11 to follow
13 Item 12; Item 12 to be heard at 1 p.m. as timed on the
14 agenda.

15 Is there a motion?

16 VICE-PRESIDENT HODGKINS: So moved.

17 PRESIDENT CARTER: We have a motion from Vice
18 President Hodgkins.

19 Is there a second?

20 BOARD MEMBER BROWN: Second.

21 PRESIDENT CARTER: A second.

22 All those in favor indicate by saying aye.

23 (Ayes.)

24 PRESIDENT CARTER: And opposed?

25 Motion carries unanimously.

1 Thank you.

2 Okay. At this time we have our Public Comment
3 agenda items. This is a time when the Board invites any
4 member of the public to address the Board on non-agendized
5 items for today. We do ask that folks fill out the 3 by 5
6 cards so that we know to recognize you. You're welcome to
7 speak on agendized items when those items are considered
8 by the Board. This is the time for the public to come and
9 address the Board on items that are not agendized for
10 today.

11 So, at this time, I do not have any cards for
12 public comment. Are there any members of the public that
13 wish to address the Board on any non-agendized items.

14 Very good. We'll move on.

15 At this point, we have a couple honorary
16 resolutions. The first is for former Board Member Rose
17 Marie Burroughs. I believe we've announced that Rose
18 Marie resigned from the board. She served on the Board
19 for approximately three years and wanted to continue to
20 serve. However, due to changes in her personal situation,
21 she needed to resign. So the Board has a resolution for
22 her, which I'd like to read into the record. And it
23 states as follows:

24 "The State of California Resources
25 Agency, Central Valley Flood Protection

1 Board, Resolution No. 08-18.

2 "Whereas, since 1911 The Reclamation
3 Board, now the Central Valley Flood
4 Protection Board, of the State of
5 California has been responsible for
6 providing flood protection to the
7 citizens of California in the Sacramento
8 and San Joaquin valleys; and

9 "Whereas, Rose Marie Burroughs was
10 appointed by Governor Schwarzenegger on
11 September 27th, 2005, to the Reclamation
12 Board in the State of California; and

13 "Whereas, Rose Marie Burroughs has
14 served the State of California and the
15 Board with distinction for nearly three
16 years; and

17 "Whereas, Rosemarie Burroughs has
18 earned the trust, respect and friendship
19 of all who have worked with her during
20 her tenure as a Board member, as
21 founding member of the California Levee
22 Roundtable, and Board's representative
23 on the Interagency Flood Management
24 Collaborative Forum; and

25 "Whereas, Rose Marie Burroughs'

1 unrelenting commitment to preserving the
2 integrity of the state's flood
3 protection and her holistic approach to
4 flood management have earned her the
5 praise and respect of fellow Board
6 members and the Board staff.

7 "Now, therefore, be it resolved,
8 that we extend to Rose Marie Burroughs
9 our highest commendation and our most
10 sincere appreciation for her services to
11 the Board, the property owners protected
12 by the system of flood protection under
13 the Board's jurisdiction, and the
14 citizens of the State of California;

15 "And be it further resolved, that
16 the Board extends its most sincere
17 wishes to Rose Marie Burroughs in her
18 next endeavors;

19 "And be it further resolved, that
20 this resolution be engrossed in the
21 official minutes of the Board and a
22 suitable copy provided to Rose Marie
23 Burroughs."

24 It's dated today, October 17th, 2008, and will
25 carry the President and secretary's signatures.

1 So there it is.

2 Rose Marie was not able to join us today. But we
3 will be sure that she gets that resolution.

4 So does anybody have anything they'd like -- any
5 comments they'd like to add?

6 SECRETARY DOHERTY: I'm just sorry she's leaving.
7 She'll be missed.

8 VICE-PRESIDENT HODGKINS: I think those are mine
9 as well. I think Rose Marie had the ability to engage
10 people in conversation and discussion that was a real
11 asset to the Board.

12 PRESIDENT CARTER: Mr. Punia.

13 EXECUTIVE OFFICER PUNIA: I think I want to just
14 let the audience know that Board Member Rose Marie was
15 instrumental in starting the California Levees Roundtable
16 and its collaborative effort to address the vegetation on
17 levee issues. And I think I will miss her presence.

18 PRESIDENT CARTER: Very good. Thank you. I echo
19 all those comments.

20 I in particular will miss Rose Marie. I served
21 on the levee roundtable with her and enjoyed working with
22 her over the past three years.

23 Our next recognition is a resolution to Mr.
24 Sterling Sorenson, who has had a long, very productive
25 career with DWR and in service to the state and to the

1 Board. So I'd like to read a resolution for Mr. Sorenson.

2 And he was not able to join us today as well.

3 This is Resolution No. 08-20, from the State of
4 California, the Resources Agency, Central Valley Flood
5 Protection Board.

6 "Whereas, the Central Valley Flood
7 Protection Board wishes to recognize
8 Sterling Sorenson's 28 years of service
9 to the State of California; and

10 "Whereas, Sterling began his career
11 with the State of California in March of
12 1980 as a Civil Maintenance Worker I for
13 the Department of Water Resources,
14 Division of Operations and Maintenance,
15 at the San Luis Field Division in
16 Coalinga where he maintained the
17 California Aqueduct; and

18 "Whereas, in 2000 sterling began
19 serving the Central Valley Flood
20 Protection Board, formerly The
21 Reclamation Board, as a Water Resources
22 Engineering Associate in the Division of
23 Flood Management's Floodway Protection
24 Section, reviewing encroachment permit
25 applications for technical, legal, and

1 environmental compliance; and

2 "Whereas, Sterling's vast experience
3 and personal knowledge of both the
4 Central Valley Flood Protection system,
5 the Valley's floor and fauna, have
6 influenced his work for the Board and
7 contributed greatly to the safety and
8 protection of the state's residents and
9 property; and

10 "Whereas, Sterling's unrelenting
11 commitment to professional standards,
12 his dedication to preserving the
13 integrity of the state's system of flood
14 protection, and his impartial review and
15 analysis of projects have earned him the
16 respect of his peers and the public."

17 "Now, therefore, be it resolved,
18 that we extend to Sterling our highest
19 commendation and our most sincere
20 appreciation for his services to the
21 Board, the property owners protected by
22 the system of flood protection under the
23 Board's jurisdiction, and the citizens
24 of the State of California; and

25 "Be it further resolved, that the

1 Board extends its most sincere wishes to
2 Sterling on his retirement; and

3 "Be it further resolved, that this
4 resolution be engrossed in the official
5 minutes of the Board and a suitable copy
6 provided to Sterling Sorenson."

7 Dated today, October 17th, 2008. And it will
8 carry the signature of the president and secretary of the
9 Board.

10 So, again, we want to wish Mr. Sorenson a
11 wonderful retirement. We hope that he will consider
12 perhaps coming back and helping us as a retired annuitant
13 in his transition.

14 Does anybody else have anything they'd like to
15 share?

16 Mr. Punia.

17 EXECUTIVE OFFICER PUNIA: I had the pleasure of
18 working with Sterling Sorenson at my previous job and at
19 my present job. Sterling is a fine example of public
20 service. He helped the Department during flood fights.
21 And with his extensive experience, he was a big help to
22 the Board for processing the permits. And he will be
23 missed. As the President mentioned, we will try to bring
24 him back as a retired annuitant.

25 PRESIDENT CARTER: Very good.

1 All right, well, thank you very much. We wish
2 him all the best in his retirement.

3 All right. Ladies and gentlemen, moving on to
4 Item 6, the Report of the Activities of the Department of
5 Water Resources.

6 I understand Mr. Qualley is not with us this
7 morning.

8 Who is giving the report for DWR?

9 Oh, Mr. Qualley is here.

10 PRESIDENT CARTER: Mr. Qualley, good afternoon.

11 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

12 Good morning, President Carter, members of the
13 Board. Sorry for the flurry of activity here at the
14 beginning.

15 (Thereupon an overhead presentation was
16 Presented as follows.)

17 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

18 Ken Kirby will be coming up in a minute. But I
19 wanted to start with -- as we traditionally do, with the
20 water conditions. It was a segment to the report that we
21 sent a couple days after your normal Board package.

22 But just a comment. You know, September 30th is
23 the send of the water year, as engineers use October 1st
24 or September 30th as the official water year. And there's
25 some nice round numbers there for the end of the water

1 year numbers, but those are not the kind of numbers that
2 we like to see. Precip, 80 percent of average; runoff, 60
3 percent of average; and reservoir storage, 70 percent of
4 average. So there's no question that we're -- you know,
5 from the flood side of things obviously we're entering the
6 season in a good situation, but as overall water managers
7 it's not the kind of situation that we want to see.

8 Water year 2008 turned out to be the 15th driest
9 out of 88 years of record. And we really, really had a
10 dry spring, which affected our spring runoff tremendously.
11 The combined March through June total precip was only 3.4
12 inches, which was the driest on record since 1921. So if
13 you think we had a dry spring, yeah, we had a dry spring.

14 And as everyone knows, storage in most of the
15 major water supply reservoirs is significantly below
16 average.

17 One possible ray of hope, if you can believe
18 long-range weather prediction forecasts -- and of course
19 there's a whole lot of variability in those -- but at
20 least the Climate Prediction Center's long-range weather
21 outlook for October 2008 does forecast above average
22 precipitation for northern California and average precip
23 for the rest of the state. So let's hope they're correct
24 on their projections.

25 Moving into the report. The first item we have

1 is for a statewide flood planning office. And we've
2 listed here some of the activities that the staff has been
3 doing, the number of meetings that they've been having to
4 get the planning process underway and significant
5 activities to get task orders issued to consultants that
6 have been brought in.

7 At this point I'd like to have Ken Kirby come up
8 and give you a briefing on the various things related to
9 the State Plan.

10 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

11 Thank you. And good morning. Again, my name is
12 Ken Kirby. I'm serving as the Portfolio Manager for the
13 Flood Management Planning Portfolio as part of FloodSAFE.
14 I serve as an executive advisor to Dan Flory, who's the
15 leader of FloodSAFE.

16 What I'd like to share with you this morning is
17 very brief. But there is a legislative requirement from
18 the 2007 legislation that was passed for the Board to
19 provide a schedule of implementation for what's called the
20 Flood Control System Status Report to the Legislature.

21 --o0o--

22 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

23 Water Code Section 9120 Requires that the Central
24 Valley Flood Protection Board submit a schedule of
25 implementation of the Flood Control System Status Report

1 to the Legislature by December 31st of this year. And
2 we're here to brief you this morning about how we plan to
3 help meet this requirement and give you an update as to
4 the activities that we've been doing.

5 --o0o--

6 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

7 There are a number of related documents in the
8 recent legislation that all fit together in terms of
9 helping meet the long-term planning needs of the Central
10 Valley Flood Protection System. The State Plan of Flood
11 Control, as you know, is required for us to develop a
12 single document that lists and describes all of the
13 components of the State Plan of Flood Control. And we're
14 also intending to put a history of how the system has come
15 to the state that it's in today.

16 --o0o--

17 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

18 The second document that is required is a flood
19 control system status report. And the legislation gives
20 us guidance that we're to ascertain obvious deficiencies
21 within the system and estimate the risk of levee failure
22 based on available information. So this is the document
23 that we're speaking about today, that we're also required
24 to provide a schedule of implementation.

25 And the third document, the one that the

1 legislation gave us a lot of guidance as to how to do this
2 document, the Central Valley Flood Protection Plan, which
3 is an integrated flood management plan for the Central
4 Valley.

5 All of these documents are related. And in fact
6 the way that we've described these is we're preparing them
7 in a phased level of content development.

8 --o0o--

9 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

10 So the first one that we're working on right now
11 is the State Plan of Flood Control, which again it's an
12 inventory of the facilities and the lands and works that
13 are part of the State Plan of Flood Control System as well
14 as a description of what they are and how they work.

15 The Flood Control System Status Report relies on
16 that description and the definition of what's in the State
17 Plan of Flood Control and, as I said, will describe any
18 obvious deficiencies within the system as well as an
19 estimate of the risk of levee failure.

20 The third document, the one that we're just now
21 beginning, is the Central Valley Flood Protection Plan.
22 And we've shared our draft scoping document that's the
23 beginning of a project management plan with the Board
24 staff and some of the Board members in a coordination
25 meeting a number of weeks ago. And ultimately these will

1 lead to federal studies that will hopefully authorize
2 considerably more federal involvement and improvements to
3 the systems.

4 --o0o--

5 PRESIDENT CARTER: Mr. Kirby?

6 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

7 Yes.

8 PRESIDENT CARTER: I'm sorry to interrupt. Just
9 so I -- I think what I heard you say was, going back to
10 the last slide, the State Plan of Flood Control at the top
11 bar is basically a description of the system?

12 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

13 Yes.

14 PRESIDENT CARTER: The second bar is the status
15 of that --

16 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

17 That's correct.

18 PRESIDENT CARTER: -- system?

19 And the Central Valley Flood Protection Plan is
20 what we plan to do with that system in the future?

21 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

22 That's correct.

23 PRESIDENT CARTER: Okay. Thank you.

24 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

25 And the Central Valley Flood Protection Plan, the

1 legislation gives us direction to have -- DWR is to
2 develop that plan by January 1st, 2012. And the Board
3 will have at least two hearings and is instructed to adopt
4 that plan by July 1st, 2012.

5 --o0o--

6 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

7 And again I'm just here today to give you an
8 update and a heads-up that we'll be coming to you then in
9 your November 21st Board meeting with a packet that we'll
10 be requesting you to take action on. It will include a
11 letter to the Legislature describing that you're meeting
12 the requirements as described in law, a brief context
13 document of how the Flood Control System Status Report
14 fits within all of the other activities that are related
15 to it, and a schedule of implementation of the Flood
16 Control System Status Report as required.

17 --o0o--

18 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

19 And I'm happy to questions or comments at this
20 time.

21 Again, I want to emphasize we've been meeting
22 with Board staff, and Executive Committee has also
23 discussed this matter as well.

24 PRESIDENT CARTER: And you're confident that we
25 can meet that schedule?

1 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

2 Meet the schedule -- which schedule, sir?

3 PRESIDENT CARTER: The schedule for the December
4 31st, 2008.

5 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

6 We will -- there is one potential delay. My
7 understanding is that after you take action, this packet
8 must be routed through the Resources Agency for review.
9 And it's possible that it -- depending on how long that
10 takes, it may not actually reach the Legislature by
11 December 31st, but it should be very close.

12 PRESIDENT CARTER: What are the implications of
13 not reaching the Legislature by December 31st?

14 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

15 No direct recourse that I'm aware of. We've
16 checked with our legal counsel. And the intent is that we
17 try and meet the deadline, but there's no direct negative
18 effect that we know of.

19 PRESIDENT CARTER: Okay. Ms. Cahill, do you
20 concur with that?

21 LEGAL COUNSEL CAHILL: Yes, I'm not aware of any
22 consequences specified in the legislation for failure to
23 meet the deadline.

24 PRESIDENT CARTER: Okay. We anxiously await the
25 reports.

1 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

2 Okay. Thank you.

3 PRESIDENT CARTER: Thank you.

4 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

5 Okay. Returning to the report that was provided
6 to you, turning our attention to Maintenance Support
7 Branch. They've been busy this summer, as they are every
8 year.

9 And we've talked to you in the past about the
10 Garmire Road Bridge replacement at Tisdale Weir. And the
11 superstructure has been completed on the new bridge and
12 it's, you know, getting close to completion. And the old
13 bridge is gone. It indicates here it'd be removed by
14 mid-October, and it is officially not there anymore.

15 And on the Maintenance Area 9 pipeline
16 abandonment, that indicates that would occurred by
17 mid-October, and it has. Keith Swanson just informed me
18 that the grouting was completed by Sacramento maintenance
19 yard just I believe either yesterday or the day before.
20 So it took awhile to get there. There were a lot of
21 right-of-way issues to deal with on that. But worked
22 through everything and got that done.

23 The Colusa mitigation site. Awarded the contract
24 at the end of September to River Partners for not quite
25 \$900,000. And so they're working on installing

1 underground irrigation piping and plantings within the
2 bypass to fulfill our mitigation obligations. And that
3 work should be completed next month. And next year
4 they'll be working on the irrigation pump station and a
5 number of other installations as indicated in the report.

6 The contract termination will be on November
7 2011, because you'd like to have these run a little longer
8 to make sure that the site gets established and there's
9 certain success criteria that are set up within the
10 contract for the mitigation. So that work is going on
11 schedule.

12 Levee road repairs is another important one, that
13 we really stretched our money pretty well on that. We got
14 a really favorable bid on the contract, so they were able
15 to resurface -- or will when they're completed have
16 resurfaced 44 miles of levee crown roads. We had to
17 divide the work into two parts because of some
18 conservation measures needed for giant garter snake. So
19 we reinitiated work on that on October 1st, and I expect
20 to complete it by the middle of November.

21 Our Flood Operations Branch talks about a number
22 of, you know, modernization of various aspects of our
23 operation there. The web portal -- going to have an
24 entirely new web portal that went live.

25 And a lot of work on the Flood Operations Center

1 Information System. The acronym for that is FOCIS. And
2 you'll be getting a more thorough briefing on this, both
3 in the written form and from staff next month, our
4 traditional, you know, beginning of flood season report
5 from our flood operations group.

6 Just a couple of comments about specifics of the
7 modernization. They've replaced the existing server with
8 two new servers, and where then the database system is an
9 enterprise level Oracle Data Management System, similar to
10 the one that CDEC operates on.

11 So these modernizations give us a lot better
12 capacity and functionality with the CDEC system, and also
13 gives us better data communication from district and field
14 offices with the updated hardware and software.

15 And the other aspect that's helpful is the new
16 data management system is a relational data management
17 system instead the text-based data management system we've
18 had in the past. So that gives a lot more flexibility on
19 use of the data system. And we're going to be doing a
20 run-through on October 20th to, you know, kind of walk
21 through the initial version of the system so we can have
22 it fully operational for flood season.

23 Since you'll be getting a more detailed report
24 next month, I think I'll leave the other items just for
25 your reading in the written report on this if you have

1 questions later.

2 I will mention that they have completed a number
3 of the pre-season meetings, and all the once in the valley
4 here were completed as of yesterday. And the last one was
5 yesterday in Stockton. So they still have a couple more
6 outside of the valley.

7 And you'll be getting a copy of the new directory
8 of flood officials.

9 And with regard to local emergency preparedness
10 and response, we've been working on an in-kind services
11 agreement with the Corps which will give us access to some
12 of Corps mapping of Delta-specific areas. And we have a
13 consultant contract to do a pilot project for developing
14 enhanced flood response and recovery plans with
15 communities. And for the pilot, Yuba City, Arcata, and
16 Rancho Cucamonga have been selected representing, you
17 know, the Valley, the North Coast, and southern
18 California. So we're extending our reach in that type of
19 service that we provide.

20 Moving to Floodplain Management Branch. There's
21 been a lot of activity. And this is also one of the ones
22 that's covered under the legislation implementation,
23 things that DWR's responsible for.

24 But they've had two Technical Advisory Committee
25 meetings so far. They kicked it off on August 28th and

1 then met again earlier this week. And they'll have
2 another one in November where they'll have the initial
3 code package formulated. They've had a lot of
4 coordination with various entities on this, and this is
5 really an active team that's doing a lot of good work in a
6 short period of time.

7 Statewide Grants Branch, the AB 1147 regs. We
8 did some fairly substantial revisions to the regulations
9 in response to the public comments that we got during the
10 earlier public review period that ended this summer. So
11 we decided to reissue another 15-day public comment
12 period, and that 15-day period ends on October 23rd. So
13 we hopefully are getting closer to where we can, you know,
14 move those to OAL and get them adopted as regulations.

15 Flood Project Modifications & Permits Branch, the
16 four early implementation projects. We've had some -- you
17 know, some interactions with fellow representatives on
18 that project as things move along. There was some
19 discussion on leasing the floodplain land back of
20 agricultural interests. And the Department sent a letter
21 to TRLIA clarifying some of the requirements of the
22 funding agreement with respect to lease agreements.

23 And also, as you probably recall, when the
24 initial EIP agreement was made, the state approved funding
25 for segments 2 and 3. But at that time segment 1 did not

1 qualify because TRLIA had not done an analysis of why a
2 setback levee would not be appropriate. So they have
3 informed us they are, you know, planning to provide that
4 type of analysis when they have an opportunity to submit
5 under the '08-'09 EIP program. So in the meantime DOE has
6 been reviewing their technical data for that work in
7 anticipation of getting that request for funding.

8 And you've been kept up to date on the crack that
9 developed on segment 1. There's been a number of
10 discussions among TRLIA technical staff, Department of
11 Water Resources, Corps of Engineers and others. And your
12 chief engineer of course has been closely involved. We're
13 continuing some discussions of the -- we'll be having
14 another technical discussion today and, you know, some
15 additional follow-up next week with all the agencies, to
16 make sure that -- you know, collectively we don't want to
17 overreact or underreact to the situation. And so we'll be
18 able to give you a more thorough report on that next
19 month. And of course your staff will be up to date on
20 what's happening on a daily basis. Where our objective is
21 the same in every direction. We just want to make sure,
22 you know, the levee is safe for the upcoming flood season
23 and later. And all the parties are working together to
24 ensure that.

25 West Sac began work on a small portion of the

1 levee near the I Street Bridge, and so that work is moving
2 along. And as you know, RD 17 has submitted a request for
3 EIP funding, so that's being reviewed.

4 Local levee urgent repairs. We are in the
5 process of serving local agencies to see if there's
6 sufficient interest for a second funding solicitation for
7 the Local Levees Program. As you recall, we didn't get
8 responses as much as we might have expected. So we wanted
9 to make sure that we weren't missing some parties out
10 there that might have an interest in the funding. So
11 based on the initial inputs that we received, we do plan
12 to make some revisions to the guidelines and go ahead with
13 the new solicitation before the end of this year.

14 Levee Repairs Branch. There's been a lot of
15 activities, both under the Sacramento River Bank
16 Protection Program and the PL 84-99 program, gotten -- it
17 took awhile to get the work going on all that, as you well
18 recall, with all the angst that we had to get the
19 agreements in and everything. But once they got that in
20 place, they've moved forward like gangbusters and they've
21 gotten literally dozens of sites done in a fairly short
22 period of time.

23 On Sac Bank we're looking to be able to do about
24 9,000 lineal feet of work. One of the issues there is we
25 want to make sure that -- you know, we work with the Corps

1 of Engineers on appropriations, and we want to make sure
2 that whatever they get in federal appropriations each
3 year, that we're able to have work in place. Because the
4 last thing we want to do is have them report back to their
5 higher level that we weren't able to -- weren't able to
6 spend the funds, weren't able to do enough work. So all
7 parties are working diligently, you know, to make sure
8 that we have -- you know, have work being done that's at
9 least equivalent to the federal funding that's available.

10 And I was focusing on Sac Bank with those
11 comments, but really same comments apply to the PL 84-99
12 work. As you can see, the work started on August 15th and
13 95 sites have been repaired just since August 15th. So
14 once they get going, they can move pretty fast on these
15 repair sites.

16 And also the slurry wall construction in the
17 Chowchilla Bypass is scheduled for completion by the end
18 of this month. And that's a real feather in the cap of
19 everybody involved. That was a really, really difficult
20 negotiation amongst everybody. And to, you know, work
21 with the Corps to make sure that we could get the, you
22 know, slurry wall completed, that was, you know,
23 contiguous for the whole length and it's really paid off.
24 And I think that's going to be a real benefit to the folks
25 in the Lower San Joaquin Levee District.

1 Urban Levee Evaluations Branch. I'm not going to
2 go through in detail, you know, various evaluations that
3 are underway.

4 They did have their tenth independent consulting
5 board meeting in September, and some of the things they
6 covered at that meeting. They reviewed the QAQC process
7 for the consultant, and also reviewed geotechnical
8 guidance document updates, interim results from a soil
9 strength advisory panel. DWR has a draft seismic policy
10 approach. And there was also an update on helicopter
11 electromagnetic geophysical surveys. And then they also
12 reviewed a couple of the technical memorandums for RD-784
13 and SJAFCA.

14 And we really -- you know, the purpose of these
15 meetings is for these independent consultants that have
16 national, if not worldwide, stature in the geotechnical
17 community to review kind of the methodologies and to make
18 sure that the evaluations are being done according to best
19 engineering practice. They aren't specifically there to
20 review the detailed -- you know, the detailed technical
21 output of studies. That's what the QAQC process is for.
22 And the Board -- the result of this particular consulting
23 board, they were satisfied with responses to the previous
24 consulting board cause they -- you know, there'll be
25 questions that come up with each consulting board and then

1 responses are provided. And then they provide their
2 reaction at the next one.

3 There is going to be another one in -- which will
4 be the eleventh ICB meeting in December of '08. And that
5 will be largely associated with the upcoming construction
6 associated with Natomas Levee Improvement Program. They
7 will be reviewing existing conditions in the Natomas Basin
8 for that work going forward.

9 So these ICBs are a real benefit for the
10 evaluation program.

11 And I think I'll end there on this part of my
12 presentation, unless you've got questions on any part of
13 the report at this point.

14 SECRETARY DOHERTY: Mr. Chairman?

15 PRESIDENT CARTER: Lady Bug, go ahead.

16 SECRETARY DOHERTY: I have a question on page 9,
17 TRLIA, the longitudinal crack.

18 Is that the one that you're going to continue to
19 study and watch?

20 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

21 Yeah, there have been some -- motion sensors have
22 been put in. And one of the things that's really
23 important is to determine was this a one-time movement or
24 is there continuing movement taking place; and also to,
25 you know, make sure that -- to correctly characterize --

1 or characterize the nature of the movement, because that
2 makes a difference on what kind of follow-up that needs to
3 be done.

4 So all of those things are being looked at by
5 really top geotechnical people from a number of different
6 organizations.

7 SECRETARY DOHERTY: Was this amended dirt?

8 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

9 Was it what?

10 SECRETARY DOHERTY: Amended dirt. Was this dirt
11 that had been mixed that had been hauled from another
12 borrow site?

13 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

14 I honestly don't know the answer to that
15 question.

16 EXECUTIVE OFFICER PUNIA: No. The crack is in
17 the existing levee. We are going to cover this item in
18 the TRLIA's report in more detail.

19 SECRETARY DOHERTY: Oh, okay.

20 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

21 Oh, yeah. This on the levee -- a segment of
22 levee that's being rehabilitated. It's not on the segment
23 to the new levee being built from scratch. I
24 misunderstood you question.

25 SECRETARY DOHERTY: Okay.

1 PRESIDENT CARTER: Mr. Hodgkins.

2 VICE-PRESIDENT HODGKINS: I maybe should know
3 this but I don't. There's two projects that are -- seem
4 to be moving forward with state funding where I'm unaware
5 of the 408 status - West Sac and Star Bend setback. Can
6 anybody tell me where we are with respect to the Corps's
7 408 approval?

8 EXECUTIVE OFFICER PUNIA: I think maybe Board
9 staff can answer that question too. Dan may have some
10 information.

11 SUPERVISING ENGINEER FUA: For the Star Bend
12 project, the 408 request letter has not been submitted yet
13 because there was a change on the approach to the project.
14 So we're waiting for the consultants of LD-1 to submit the
15 new information to be attached to the 408 letter.

16 VICE-PRESIDENT HODGKINS: Okay. How about West
17 Sac?

18 SUPERVISING ENGINEER FUA: West Sac, the 408
19 approval was completed. Although the last time I heard is
20 that they really have not submitted the detailed
21 conditions yet. I don't know if anybody here knows if
22 those conditions have been made available with the Corps.
23 But the approval was done.

24 VICE-PRESIDENT HODGKINS: Okay.

25 SUPERVISING ENGINEER FUA: Eric just said that

1 yes.

2 VICE-PRESIDENT HODGKINS: Okay. And the Star
3 Bend setback, they haven't actually done any construction?

4 SUPERVISING ENGINEER FUA: No.

5 VICE-PRESIDENT HODGKINS: I mean there's a
6 significant amount of state money that's gone into that.

7 SUPERVISING ENGINEER FUA: No, the schedule is
8 next spring.

9 VICE-PRESIDENT HODGKINS: Okay.

10 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

11 Yeah, the important thing for Star Bend, they
12 have to be able to, you know, complete it within a single
13 construction season, which means they have to have every
14 single detail lined up at the very earliest part of the
15 construction season to get through it. And with the way
16 the approval process went this year, there was just no
17 conceivable way for them to do that. So they've been
18 focusing on getting everything lined up and resolving
19 issues and that type of thing.

20 VICE-PRESIDENT HODGKINS: Thank you.

21 PRESIDENT CARTER: Any other questions for Mr.
22 Qualley?

23 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

24 Before I move into the ledge update?

25 PRESIDENT CARTER: Yes.

1 Okay. Please proceed.

2 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

3 Okay. For the ledge update, we -- I provided the
4 first presentation on this back in April of 2008. And
5 during that meeting, I focused on items that were due by
6 June 30th of -- or July 1st of this year. So for this one
7 I'm mostly going to be focusing on the items that are
8 due -- and, interestingly enough, the legislation
9 sometimes it says December 31st of '08 and sometimes it
10 says January 1st of '09. So, anyway, basically the end of
11 the year. Focusing on those items.

12 I did want to just briefly mention the best
13 available maps of course they were due by July 1st of
14 2008. And then we did in fact, you know, complete the
15 maps by July 1st of 2008. But in response to a number of
16 questions from local entities, we delayed the public
17 posting of those maps until there was an opportunity for
18 them to comment and for us to respond.

19 So, we did receive a number of comments and
20 incorporated those into a set of updated maps that we did
21 mail out on August 29th, 2008, back to the entities. And
22 then we issued a press release on September 15th and put
23 the maps on the website.

24 As of October 1st, that website had had 2800
25 hits, and 4300 pages had been viewed on the website. It's

1 interesting how the computers can track all this stuff.

2 But we have received some new comment letters
3 from four communities. And we are responding to those and
4 we'll make revisions as appropriate. And in the idea and
5 what we've been explaining to people all along is that
6 best available maps means just that. And as new
7 information is developed or we're aware of additional
8 information or if errors are noted, we'll be making those
9 updates as we go along. There's a tremendous amount of
10 information on these maps. There's a lot of them. And it
11 was really a gargantuan task just to get to the point of
12 having a set of maps that was, you know, close enough, you
13 know, to release and provide information to local
14 communities.

15 So it will be an ongoing process. And as new
16 studies are completed by FEMA, the Corps, DWR and local
17 agencies, we'll be incorporating that information into the
18 maps so that they remain the best available maps, you
19 know, to guide local communities or whoever wants to have
20 the most up-to-date information on floodplain status.

21 Okay. There's a number of items for -- that are
22 due either end of the year or the beginning of 2009. And
23 from April you probably recall the spreadsheet that we
24 sent. And I added a column to that just to help track
25 things and just call the item number, so that it's easier

1 to reference back from when we're talking about these
2 things in a text form where you can find them on this
3 spreadsheet.

4 And just to show you how good I am at computer
5 stuff, this has been printing out an 8 1/2 by 11 for me,
6 so I've been -- you know, it's been an eye test. And just
7 accidentally it printed out 11 by 17 last time. I said,
8 "Wow, I can actually read it this time."

9 But, anyway, so I've provided cross-reference
10 with -- well, with this information. And basically we
11 just want to use this for, you know, listing out the bills
12 that are there, what are the timelines, what's the bill
13 number, who's responsible. It just gets to be too
14 unwieldy to update this with status information. So my
15 plan is just to keep this as a reference, and then we'll
16 provide status information through text or other means.

17 So for the first two, they're from AB 156 and
18 they relate to the mapping schedule in reference to the
19 spreadsheet as Item No. 8 and Item No. 30.

20 We are developing a definitive schedule for that
21 in close coordination with the Central Valley Flood
22 Protection Plan. And next month, we'll be providing a
23 schedule to the Board for review, and there will be a
24 presentation at your November 21st meeting on this
25 schedule.

1 And the status -- okay. The next item then would
2 be number 9, also from AB 156. And that's the Flood
3 Control System Status Report. And that's the one that Ken
4 Kirby just gave you a quick briefing on and we'll be
5 providing more information on at the November meeting.

6 BOARD MEMBER SUAREZ: Excuse me.

7 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

8 Yes.

9 BOARD MEMBER SUAREZ: Could I ask you a quick
10 question regarding that item that -- reporting back to the
11 Legislature?

12 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

13 Um-hmm.

14 BOARD MEMBER SUAREZ: The other gentleman
15 mentioned that after you do your presentation here we have
16 an opportunity to review and okay and signature under, I
17 imagine, the President for transmittal to the Legislature.
18 The package is going to go to the Resources Agency for its
19 final review.

20 My question is: If they have any changes to it,
21 what happens to it? I mean they don't have any authority
22 to change something that we've already approved at this
23 end. So can somebody kind of talk me through that.

24 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

25 Okay, I can give it a shot, unless somebody is

1 still here that wants -- I can give my -- my response I
2 guess would be - and Ken can offer his own thoughts - was,
3 you know, if any reviewing entity at any level has -- you
4 know, brings up some questions, we're certainly going to
5 look at that and we're, you know, going to discuss it with
6 them and discuss it with others. And if it -- unless, you
7 know, we're able to persuade whoever that it's, you know,
8 correct as is, if we have to go back and make some
9 changes, we'll come back through others who have approved
10 it before.

11 BOARD MEMBER SUAREZ: Right. Because, correctly
12 me if I'm wrong, but the transmittal goes from this Board
13 to the Legislature.

14 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
15 Okay.

16 BOARD MEMBER SUAREZ: That's I believe what the
17 legislation says. So once we take action on it --

18 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
19 Okay. Ken, did you want to take a stand on that?

20 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:
21 Right. My understanding -- and I have to say I'm
22 new to the processes of the internal administrative units
23 and how that correspondence goes to the Legislature. But
24 DWR counsel has informed us that while we are required and
25 you are required to provide the letter and the schedule to

1 the Legislature, that it's current practice within the
2 administration that anything that's coming from agencies
3 goes full review for the Resources Agency and the
4 Governor's Office. My understanding is that it's --
5 there's a fairly perfunctory function, that there's no
6 expectation that there would be changes, but that it is an
7 expectation that DWR when transmitting anything to the
8 Legislature or, my understanding is, the Board as well, if
9 it's going directly from an administrative function to the
10 Legislature, that it goes through the administration for
11 review. That's my understanding.

12 BOARD MEMBER SUAREZ: Well, perhaps you should
13 get it to the Resources Agency first before bringing it to
14 us, so we can then finalize it.

15 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

16 We can certainly do that. If we do that, there
17 will be no way to meet the deadline as proposed. So this
18 is our -- our intent is to try and get your input and your
19 approval and with the expectation once it goes to the
20 Resources, there would be no changes. But we would still
21 honor the requests that they have for review.

22 PRESIDENT CARTER: I believe that Ms. Suarez is
23 correct, and that's probably a good suggestion in terms of
24 running it by the Resources Agency and the Governor's
25 Office if that's what your legal counsel suggests you do.

1 But I think that -- I mean the adoption lies and
2 responsibility and authority lies with this Board and no
3 one else. And once that's done, those administrative
4 functions can have comments. But aside from
5 reconsideration of the Board, there's nothing that can be
6 done.

7 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

8 Okay. So what I'm hearing, what we can do is we
9 can bring the information to you as intended in your
10 November meeting so that you have a chance to weigh in on
11 what is suitable to you. We can then submit -- and then
12 we could submit it to the Resources Agency without asking
13 you for adoption or taking action and then --

14 PRESIDENT CARTER: I would do it in parallel.

15 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

16 So what I'm hearing you say is you want us to
17 submit to Resources before you say that you're good with
18 it?

19 PRESIDENT CARTER: I think that you ought to --
20 if you're going to bring something to the Board and you're
21 going to recommend approval, if your legal counsel says
22 that you need to run it by the Resources Agency and the
23 Governor's Office first, you need to bring it -- you need
24 to do that with them before you bring it to the Board for
25 approval.

1 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

2 Yes, I understand that. And so what I'm asking
3 is -- what I would be changing is, would you like to see
4 the information in the next meeting, in your meeting - and
5 we would not ask you for approval, we would just ask you
6 for your comments - and then it would go to the Resources
7 Agency and then we would come back to you and ask you for
8 approval? Or would you like us to just work with the
9 Resources Agency first, you will not see the information
10 next meeting in November, and then it would come to you
11 probably in December and then it would go -- if the
12 Resources Agency gets it back to us in time, you would see
13 it in December for action?

14 LEGAL COUNSEL CAHILL: You know, I have not been
15 informed of this issue until just this morning and haven't
16 had a chance to look at it. But I'm thinking that the
17 Department of Water Resources runs things through the
18 Resources Agency and the Governor because it's an agency;
19 but that independent boards who make their own decisions
20 are perhaps not subject to that requirement. And so I'd
21 like to look into that. I think you definitely want to
22 bring information to this Board as early as possible so
23 that they can have meaningful input. And I think we need
24 to look at whether -- if the legislative requirement is
25 that the letter come from this Board, I'm sure there is

1 any review required. And so we'll look at that.

2 PRESIDENT CARTER: You know, a third suggestion,
3 Mr. Kirby, might be to -- we definitely -- I suggest that
4 you bring it to the Board in November, and it's without
5 asking for approval. But at the same time to send it up
6 the flagpole with the Resources Agency and the Governor's
7 Office. And you can incorporate the comments from all
8 three entities or more simultaneously and then bring it to
9 the Board for approval and adoption in December.

10 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

11 Okay. We can do that.

12 PRESIDENT CARTER: That's what I would suggest.

13 BOARD MEMBER BROWN: Mr. Chairman?

14 PRESIDENT CARTER: Yes, sir.

15 BOARD MEMBER BROWN: Mr. Kirby was very helpful
16 when Mr. Hodgkins and I met with him and staff in bringing
17 the progress report on what he's doing and scheduling and
18 such. But if this could help you in some manner, or this
19 Board, I think Mr. Hodgkins and I both would be available
20 for setting out on some type of a progress report earlier
21 on that we might relay back to this Board.

22 PRESIDENT CARTER: Okay. Well, we'll -- so if
23 you would like earlier interaction with a couple members
24 of the board, Mr. Brown has volunteered.

25 And, Mr. Hodgkins, are you willing to --

1 VICE-PRESIDENT HODGKINS: Certainly.

2 PRESIDENT CARTER: Okay. So between now and the
3 November meeting if you'd like some Board input from a
4 couple individual Board members, by all means.

5 But I still think that it's very wise to bring
6 what you have to the Board in November; but at the same
7 time since there's some lead time in terms of Resources
8 Agency review, start that process as earlier as you
9 possibly can.

10 DWR FloodSAFE PLANNING PORTFOLIO MANAGER KIRBY:

11 Okay. We'll do that.

12 Thank you.

13 PRESIDENT CARTER: Excuse me, Mr. Qualley. I
14 just wanted to make a note to the record that Ms. Teri Rie
15 has joined us at this time. Thanks.

16 Good morning.

17 BOARD MEMBER RIE: Morning.

18 PRESIDENT CARTER: Please proceed.

19 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

20 Okay. Continuing on with the page that starts
21 with S-10 on the top. Again, an AB 156 requirement for
22 flood risk notification for the Department to prepare and
23 maintain maps for Levee Flood Protection Zones.

24 Our requirement of course is that DWR provide
25 written notice of these potential flood risks to the

1 property owners. And we have initiated such a flood risk
2 notification program. We've done several things. We've
3 developed a web page to post the updated maps, and we've
4 also prepared a document package to communicate the
5 program with 15 counties and 74 incorporated cities. And
6 we've analyzed various data sources and methodologies and
7 working with four regional mapping consultants to finalize
8 the preliminary LFPZ maps by the end of this year.

9 And, again, this will be another item that the
10 Department gives a presentation to you on at your November
11 21st meeting.

12 And then our plan is beginning in January that
13 we'll share these preliminary Levee Flood Protection Zone
14 maps with the communities and request their reviews in
15 order to meet the requirements of the legislation.

16 VICE-PRESIDENT HODGKINS: George, are you
17 thinking of putting those up as well on the website?

18 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
19 Yes.

20 VICE-PRESIDENT HODGKINS: Good.

21 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
22 Yeah.

23 Next item, two items, both related to local
24 maintaining agency reports. One is a requirement that on
25 or before September 30th the local agency prepares a

1 report to the Department providing various information
2 that's cited later in the report. And then the kind of
3 the companion item is by December 31st of each year the
4 Department shall prepare a report and transmit it to your
5 board, a report on the project levees operated and
6 maintained by each local agency. So a sequential process
7 that is to take place each year.

8 And then on the next page it indicates the types
9 of information that the local agency reports are to
10 include, information known to the LMA that's relevant to
11 the conditions of the performance of the project levees,
12 information identifying known conditions that might impair
13 or compromise the level of flood protection provided by
14 the project levee.

15 A third item is a summary of the maintenance
16 performed by the LMA during the previous fiscal year.

17 And fourth is a statement of work and estimated
18 costs for O&M to the project levies for the current fiscal
19 year as approved by the local agency.

20 And, finally, any other readily available
21 information contained in the records that might pertain to
22 the performance of the project levees.

23 And there is information requirements also for
24 nonproject levees that local agencies might voluntarily
25 prepare and submit to the Department.

1 Let me back up on that. For the nonproject
2 levees it would be providing information on nonproject
3 levees that also benefits land within the boundaries of
4 the project levees.

5 And then the final item is for levees that don't
6 fall into the category of project or nonproject. They can
7 voluntarily provide information. The idea is, and what
8 our staff has been, you know, working with the local
9 agencies on, is, you know, it could be a -- our intent is
10 for it to be a real useful database for everybody involved
11 at all levels, similar to what we have on our CDEC system.
12 I mean we have cooperators for various types of hydrologic
13 data coming in from all over the state, and it's a real
14 valuable resource. And our idea is that this -- by having
15 this database and information available, it could be a
16 valuable resource for local maintaining agencies for the
17 state, local, and for everyone.

18 So our status as of this month -- we put together
19 a program fact sheet back in may and distributed that. We
20 had public workshops in June and July and -- I'm sorry --
21 the public presentations in June and July and then
22 workshops in August. And actually the development of the
23 website was a suggestion from the local agency feedback,
24 and we've mentioned the website at the end of that page.

25 On August 27th, we mailed a reporting

1 notification letter and reporting package to the local
2 agencies; and that basically, you know, described the
3 information that they needed to provide by September 30th.
4 I got an update from Jeremy Erich just the other day. And
5 he indicated to me that 42 of the local agencies filed
6 their reports with DWR by the deadline. And there have
7 been 10 more that have been received after the deadline,
8 and there's 44 that are still outstanding. And for a
9 follow-up action, our staff was planning to Email and send
10 a reminder letter to the outstanding LMAs. And our
11 request then would be that any further enforcement actions
12 be carried out by the Board. So we'll be certainly
13 updating you at the next Board meeting and keeping staff
14 informed of the progress as we go along. So we've got a
15 little over half that have responded today.

16 The final item to report on is the latest -- the
17 building codes. And I purposely left this in as double
18 coverage. I'd already mentioned it in the report
19 previously, but I wanted to include it here as well, you
20 know, for in our completeness on the legislative update.

21 So at this point that concludes my report on the
22 activities of the Department and on the legislation.

23 Ricardo Pineda is here. If there were any
24 additional questions you might have, an awful lot of these
25 legislative items are the responsibility of, you know,

1 either him or individuals he supervises.

2 And also he's prepared, if the Board has time
3 today, to provide a brief presentation on kind of lessons
4 learned from the recent, you know, flood events in the
5 Midwest. And he's had -- he has really close coordination
6 of course with his monthly trips to New Orleans and
7 participating on their board for, you know, following up
8 on actions to Katrina. So if the Board had time, Ricardo
9 would be willing to provide a brief presentation at this
10 time.

11 PRESIDENT CARTER: Okay. Mr. Qualley, I'd like
12 to thank you for a very thorough report from DWR. I
13 really appreciate that.

14 I think we could take ten minutes and it's worth
15 listening to Ricardo shower us with pearls from the
16 Midwest.

17 (Laughter.)

18 BOARD MEMBER SUAREZ: Can I ask a question?

19 PRESIDENT CARTER: Absolutely.

20 Are there questions for Mr. Qualley?

21 BOARD MEMBER SUAREZ: Yes, I do actually have one
22 more question if you have a moment.

23 I'm looking at your legislative report and this
24 is very helpful and I appreciate that you share this with
25 us.

1 I'd like to go back to the issue of the building
2 codes -- review of the buildings codes to deal with
3 flooding issues. And I still -- I'm going to voice a
4 concern that I voiced before, and it really has to do I
5 think more with our -- the way we're interpreting this
6 particular section of the Health and Welfare Code, I think
7 it is.

8 It is my understanding based on the debate that
9 occurred during the passage of that legislation that the
10 Legislature wanted an additional forum for the public to
11 have an opportunity to raise concern regarding building
12 codes and flooding.

13 And the trajectory that we seem to be headed
14 where we just have staff participating -- our staff
15 participating as a technical advisor in this discussion, I
16 don't think gives the public an opportunity to come to
17 this Board, listen to what we are recommending in that
18 process, and then providing some reaction. So again I'd
19 like to raise the issue. I don't -- I appreciate that Mr.
20 Fua's participating. The legislation says that this Board
21 is going to work and provide input to the Building
22 Commission. I don't see that process laid before us
23 before December and I'd really like to get something in
24 place for that.

25 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

1 Yeah, I think the intention is to get public
2 involvement in the process. And let me just let - in the
3 interests of time right now - let Ricardo, who's been, you
4 know, deeply involved in this, to respond to that
5 question.

6 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

7 Good morning, President Carter, Vice President
8 Hodgkins, members of the Board.

9 And, Member Suarez, I think that's a great
10 question. What wasn't mention in the ledge report is
11 we're going to, the building codes team, myself and Brian
12 Walker are going to come back to the Board. We made a
13 presentation a couple months ago. And we're going to come
14 back to the Board and give you an update at your November
15 meeting. The next Technical Advisory Committee meeting is
16 in I think November 14th. So we'll be able to report to
17 you on the results of the first three meetings that we
18 have. As you mentioned, Supervising Engineer Fua is
19 participating. So we are -- and we have members of the
20 Technical Advisory Committee, from Fire Marshal, Office of
21 Statewide Health Planning, State Architect, State Water
22 Resources Control Board, a whole myriad of agencies and
23 some local agencies. So we're very much on a fast track.
24 The documents we produced from the TAC are essentially
25 public if people want to ask for them. The meetings

1 aren't closed. So we will have a forum here for the
2 public if they want to comment at the next November
3 meeting. We do intend to come back in December and give
4 you further updates as we try to finalize that package.

5 The legislation doesn't call for the Board to
6 approve the package. The legislation calls for the Board
7 to be one of many agencies that we coordinate with. We're
8 on a very tight time deadline to submit this package to
9 the Building Standards Commission by January 1st. But
10 essentially the Building Standards Commission because of
11 their scheduling isn't really going to do anything with
12 the package until July 2009. So we have six months to
13 essentially modify the package as necessary. And at that
14 point kind of starting in January -- we're kind of given a
15 deadline that was very, very difficult to meet.

16 So after we submit to the Building Standards
17 Commission, which essentially is just going to be a
18 placeholder, we're going to start an extensive outreach
19 with working through the Central Valley Plan Outreach
20 Program -- or Communications Program to continue the
21 communication with communities and other stakeholders
22 groups.

23 So we know that we're on a tight time schedule.
24 Our coordination as required in the legislation is through
25 the TAC. We've come to the Central Valley Board once.

1 We're going to come back in November, December. And then
2 we're going to start -- once we get our placeholder
3 package in to meet the legislative requirement, then we're
4 going to start a more detailed community and stakeholder
5 outreach activity between January and July and modify as
6 necessary.

7 Do you believe that's satisfactory? I'm happy to
8 take recommendations and -- if you want to act on those
9 recommendations if appropriate.

10 PRESIDENT CARTER: Any comments for Mr. Pineda?

11 BOARD MEMBER SUAREZ: I just have one.

12 I can understand why DWR has a perhaps slightly
13 different view of what our role is than I might have. I
14 think that our role is a little more active than just we
15 sit down and talk. I think we have an obligation to do
16 something a little more formal, and including our process
17 where people have an opportunity to come here and tell us
18 what they think about this. Actually I guess the best way
19 for me to see it, I expect our staff to give us their own
20 independent assessment of how these building codes are
21 being developed and whether they feel it is sufficient.
22 And I think then we have an obligation under the statute
23 to act upon those recommendations.

24 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

25 One thing that I could offer, Member Suarez, is

1 that if the Board would like a special workshop just for
2 the building codes, that is -- you know, it's not a
3 regular Board meeting -- it's a noticed Central Valley
4 Board workshop just on the building codes, we'd be happy
5 to work with Jay Punia and the staff to have that sometime
6 in December if you think that would be beneficial.

7 BOARD MEMBER SUAREZ: No, I would like to hear
8 independent judgment of my staff on what they think about
9 these building codes. And I'd like for us to get that
10 information and decide, well, this is important enough to
11 make sure all along the process that these considerations
12 are taken care of. I don't expect something from you.
13 I'm expecting something from our staff.

14 PRESIDENT CARTER: So is it possible to get some
15 sort of a staff analysis of the recommendations in our
16 November or December meeting?

17 EXECUTIVE OFFICER PUNIA: We can include -- Dan
18 is working closely with Ricardo so Dan is up to speed.
19 And if he has any concern, he would be glad to share it
20 right now or in the next Board meeting.

21 PRESIDENT CARTER: I think maybe we ought
22 to -- the question was if we can, not today, but either in
23 November or December have the staff give the Board their
24 thoughtful analysis of the recommendations that are coming
25 out of the working group.

1 SUPERVISING ENGINEER FUA: Yeah, I'd say that it
2 would likely be in December, because even now the draft
3 modification package is not there yet. I believe in
4 November you will have that -- Board meeting you will have
5 that draft?

6 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
7 Yes, we intended to come here in November and
8 give an update. So Mr. Fua can respond at that point to
9 our update or he can wait till December.

10 SUPERVISING ENGINEER FUA: Is that going to be
11 the draft modification package or just an update?

12 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
13 Wherever we're at at the November meeting.

14 SUPERVISING ENGINEER FUA: Okay. So I would say
15 that it would be likely December.

16 PRESIDENT CARTER: So we'll plan for December.

17 BOARD MEMBER SUAREZ: Thank you.

18 PRESIDENT CARTER: Very good.

19 Mr. Pineda, you have about ten minutes max.

20 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
21 Okay. Well, Thank you.

22 (Thereupon an overhead presentation was
23 Presented as follows.)

24 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
25 Well, at the last meeting I was in Riverside,

1 California, at an alluvial fan task force meeting, which
2 is another one of our kind of statewide flood management
3 things that are going on that was in legislation, so I
4 wasn't able to be here. Eric Koch of Division of Flood
5 Management made George Qualley's presentation. And I
6 believe a Board member, it might have been Board Member
7 Suarez, asked a question, were there lessons learned from
8 the midwest floods and Hurricane Gustav, which caused
9 extensive flooding? And the answer to that is yes. I
10 mean we learn lessons, and we need to learn lessons from
11 every type of flood event or every natural disaster that
12 occurs in our country or abroad.

13 So I did a little research. I am -- have the
14 privilege and the blessing to be down in New Orleans once
15 a month. And I just flew back from there yesterday. I
16 was only down there for a day. And, you know, they're
17 working on trying to improve their system. And Gustav was
18 a near miss.

19 But even prior to that, in June, we had flooding
20 along the Cedar River, which is part of the Mississippi
21 River system, the Des Moines River, the Iowa River, and
22 the Mississippi River after a very, very wet spring in
23 Iowa. So essentially along those rivers, in parts of one
24 of those systems this was the highest stages that were
25 seen since 1929 and 1851, the previous bigger floods of

1 record. So we know with river hydraulics and hydrology,
2 everyone thinks the 1993 flood in the midwest was the
3 biggest one, but it just kind of depends and where you're
4 at.

5 --o0o--

6 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

7 There were -- we contacted the Rock Island
8 District of the Corps of Engineers. Remember, there's
9 over 30 Corps districts nationwide similar to our
10 Sacramento District. And the report that we got back --
11 and I did get an after-action report electronically that
12 has a lot of technical detail that I can forward to Jay
13 Punia if the Board members would like to read it. And
14 essentially there were nine levee breaches that the Rock
15 Island District reported - four federal levees, or Corps
16 levees, and five local levees. And remember, flood stages
17 according to the report in some cases exceeded 200-year
18 events and in some cases exceeded 500-year events.

19 And these levees -- these nine levee breaches or
20 levee failures according to the Corps were all caused by
21 overtopping. So what's the lesson learned out of that? I
22 believe two lessons, is we know that the communities of
23 Cedar Rapid, Iowa, and Iowa City, Iowa, were both heavily
24 flooded, thousands of properties, lots of -- billions of
25 dollars in structural damages. So the lessons that I

1 personally got out of it is that when we look at flood
2 protection for a community, we have to look at all sources
3 of flood water. That was an issue in New Orleans. That
4 is an issue currently with our urban and non-urban levee
5 investigations. We're getting more and more into the need
6 of looking at nonproject, non-Central Valley Board Corps
7 of Engineers levees.

8 In addition, we need to plan for these large and
9 very rare events that we don't ever think will happen,
10 because a 200-year event in the midwest is as rare as a
11 200-year event out here. I don't know if we've ever seen
12 a 200-year event here on our Sacramento system. But every
13 time these big events occur, they change the hydrology,
14 but we keep on seeing them. So some events, some of the
15 river stages exceeded 500-year frequency. Those are very,
16 very rare events, and we need to plan for them. If a
17 community's going to go totally under water with a
18 200-year event or a 500-year event, then obviously, if we
19 had the wherewithal, we'd want to provide that level -- or
20 higher level of protection to that particular community.

21 Another lesson from the midwest and also from the
22 near miss in Gustav in New Orleans, do we really want to
23 start looking at protecting the landside of the levee? If
24 the levee's going to overtop for whatever reason, if you
25 can put some type of erosion protection that's resilient

1 to water flowing over it, you could save that levee from
2 failing to ground and thus significantly decrease the
3 volume of flooding. They've done a little bit of that in
4 New Orleans with some concrete splash guards next to the
5 concrete flood walls that are on top of some of the
6 levees. And the Corps research lab, called ERDC, in
7 Vicksburg, Mississippi, working with the Corps in New
8 Orleans District, has come up with a draft levee armory
9 manual. And I've been sharing that with some of my
10 colleagues here at DWR, had the ability to get kind of an
11 advanced copy and I'm kind of on a review team. It's a
12 very good Corps manual with a lot of equations and
13 analysis that's what type of erosion -- or landside armory
14 is best. So if we had some of that landside armory, that
15 could have helped reduce damages in the Midwest.

16 --o0o--

17 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

18 Bridges cross many river systems whether they're
19 leveed or unleveed, and many of those bridges are old
20 along with -- as we know, a lot of our infrastructure in
21 the United States is old. And sometimes those bridges
22 aren't high enough. Those bridges can wash away,
23 providing impacts to transportation. But also those
24 bridges can -- can be debris that can flow downstream and
25 cause damage to other facilities, whether levees, flood

1 walls, or anything that's located downstream.

2 So some bridges did wash out. I think this
3 picture was from Illinois. So we need to look at -- we
4 need to consider that.

5 --o0o--

6 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

7 So right around -- that was kind of in June, I
8 believe. And then right up before Labor Day, you know, we
9 caught the attention -- the hurricane season started. But
10 one part of the year a fair amount of active hurricane
11 season this year. And hurricane Gustav started forming,
12 and the predictions from the hurricane center in Miami was
13 that it was heading towards the Gulf Coast. And the cone
14 of impact -- and that's a new terminology -- maybe that
15 terminology's been around for awhile, but that regularly
16 came up on the Weather Channel and other news media -- the
17 cone of impact included New Orleans. So it had everybody
18 very, very nervous there because that city and the
19 surrounding communities were so devastated by Hurricane
20 Katrina in 2005 and Hurricane Rita along the coast.

21 So there were a lot of concerns. As we all know,
22 the area was evacuated and that evacuation was successful.
23 For a short time Hurricane Gustav reached Category 5, the
24 largest on the -- I forget the name of the scale,
25 Saffir-Simpson or something of that nature -- scale. And

1 when it hit landfall it was just below the Category 3,
2 which is super powerful. It hit to the west of New
3 Orleans. But because of the rotation of the winds, it did
4 cause significant storm surge, and it quickly decreased to
5 a Category 1. So they missed the main brunt of it.

6 --o0o--

7 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

8 But there's a fair amount of prediction time.
9 With the great computer models and the heroic efforts of
10 the men and women who fly the hurricane hunter airplanes
11 from NOAA and the Navy and the Air Force into the
12 hurricanes to collect data, there was a fair amount
13 predictability of where it was going to hit and what
14 strength. So there were some preemptive measures that the
15 local communities, the local levee authority that I helped
16 out which oversees three levee districts that manage over
17 300 miles of levees and many flood gates and flood
18 structures and pumping stations.

19 Well, anyways, they know that some of the levees
20 aren't high enough, and the Corps is working diligently by
21 2011 to try to get to 100-year protection. Prior to
22 Katrina they thought they had Category 3 protection or
23 around 250-year levees.

24 So essentially they put out -- either some of
25 these sandbags were already here or they put them out.

1 These are, I call them, big sandbags. These are the type
2 that could be dropped from helicopters also to help plug
3 breaches. So they raise levees by using these big
4 sandbags. And those will stay there for the time being
5 until the Corps issues contracts or carries out the
6 contracts to raise these levees to the new authorized
7 level.

8 --o0o--

9 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

10 So that's kind of having good predictive tools
11 allow them to take emergency precautions.

12 Another tool that they put in place and they're
13 kind of leaving out there until construction can replace
14 it with permanent facilities is they use these wire
15 baskets lined with burlap and fill with granular fill, and
16 they're called Hesco baskets. I think Hesco is probably
17 the proprietary name. And they're very durable. They're
18 not really reusable, meaning you can't take, you know,
19 take them down and store them in a warehouse and reuse
20 them. It's kind of a one-shot deal. But they also
21 contain about a cubic yard, about 3,000 pounds worth of
22 material, and they're used for raising levees, protecting
23 flood walls, and building temporary water retention
24 structures.

25 --o0o--

1 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

2 Another advantage of the Hesco baskets is you can
3 stack them and essentially get six feet of additional
4 levee hydro protection. So that was done in anticipation
5 of the oncoming waters of Gustav.

6 --o0o--

7 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

8 Another lesson -- a lesson learned out of Katrina
9 that they applied in Gustav was the Corps went to an
10 effort and locals went to the effort to build safe
11 facilities for their workers. In many of the areas it
12 wasn't safe during Hurricane Katrina so the workers left
13 town and the -- some of the flood workers left town and,
14 you know, made it difficult to carry out some of the flood
15 fighting. Katrina was such an overwhelming event that
16 even if they were there, it may not have made any
17 difference. But nobody abandoned their post. And these
18 safe houses that were built between Katrina and now Gustav
19 really helped out.

20 We saw on the news many prominent news people
21 near the Inter-Harbor Navigation Canal flood walls in New
22 Orleans. The Inter-Harbor Navigation Canal connects the
23 Mississippi River on the west with Lake Pontchartrain to
24 the east. And essentially shipping was one of the
25 founding -- one of the reasons why the French settled New

1 Orleans. It was an indian settlement. And so shipping
2 remains the Port of New Orleans one of the top three ports
3 in the United States. So shipping's very important.

4 Because government as a whole and locals have
5 built all these navigation facilities, they connect with
6 the water sources and they're subject to storm surges. So
7 the hurricanes come with the big winds, large diameters of
8 the hurricanes, and they push the water. So the storm
9 surge in the Inter-Harbor Navigation Canal -- which the
10 water in the Inter-Harbor Navigation Canal, or IHNC, is
11 protected by flood walls on top of levees. Those levees
12 on the south side failed during Katrina -- some of them
13 failed and flooded the lower 9th Ward that we're all
14 familiar with and a large part of St. Bernard Parish.

15 So here we go again with another event and, lo
16 and behold, the storm surge is causing wind wave
17 overtopping of the Inter-Harbor Navigation Canal flood
18 walls. These flood walls were -- the ones that failed
19 were replaced. Originally they were "I" walls or
20 essentially sheetpiling driven right into the levee with
21 concrete poured with the portion that stuck out of the
22 levee. And the portions that's were failed were replaced
23 with "T" walls, meaning that the flood wall looks like a T
24 with the steel sheetpiling embedded in a concrete
25 foundation.

1 But many of the "I" walls still remain. After
2 Katrina the Corps of Engineers reduced the stick-up height
3 of the flood wall by placing soil material next to the "I"
4 wall, and so strengthened them. But they also built --
5 lesson learned out of Katrina that paid benefits here --
6 is they also built in a landside splash guard.
7 Essentially if water overtops, there's a concrete area
8 that the water hits, dissipates the energy and doesn't
9 caught erosion. So without that concrete splash guard,
10 the levees along the Inter-Harbor Navigation Canal south
11 side could have eroded significantly and potentially could
12 have failed. So that was a great relief that they had
13 that splash guard. But just seeing the whole canal
14 totally filled up was very disconcerting.

15 Also, a lesson learned out of Katrina and also
16 the Midwest floods, and I think that we are applying here
17 in the Central Valley, is we need the best predictive
18 water surface models possible. Given a certain flow or a
19 certain hurricane with certain wind and diameter and where
20 it hits landfall, how high is the water going to get?
21 That allows you to have better emergency response and plan
22 the structural improvements or betterments to the system
23 that you need. So we need -- as they're doing a lot of
24 computer modeling out there and they're doing a lot of
25 computer modeling in the Midwest, we're involved here in

1 DWR flood management, working with our four regional
2 contractors and the Central Valley Flood Plan to develop
3 the best predictive water surface models for the
4 Sacramento and San Joaquin River.

5 --o0o--

6 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

7 One of the untold stories of Gustav that really
8 wasn't in the news was the amount of ships and barges that
9 were scheduled to be salvaged -- that's a big business in
10 the Port of New Orleans, and the Inter-Harbor Navigation
11 Canal is part of the port system -- that were scheduled to
12 be salvaged that somehow - no one understands why it
13 happened - but were ripped -- well, they were ripped from
14 their moorings. So they should have been better secured
15 but they weren't. And these ships and barges were kind of
16 floating round the canal. And at the Floodplain
17 Management Association Conference in San Diego, Colonel
18 Jeff Bedey, who's head of the -- who was head - he
19 recently retired -- head of the Hurricane Protection
20 Office, kind of made the similar comments, that if one of
21 these ships or barges that became ripped from their
22 moorings would have slammed into one of the vertical "I"
23 walls -- or flood walls, that could have caused the wall
24 to fail and caused extensive flooding.

25 Some people say one more major flood event in New

1 Orleans kind of dooms the community. And they are doing a
2 good job of rebuilding their economy and getting people
3 back.

4 So that was a very scary situation. The Coast
5 Guard reported back and the Port Authority back to one of
6 our board meetings. And no real excuse for why the ships
7 were ripped from their moorings other than the winds and
8 wave. And the new plan is when certain wind factors and
9 directional factors criteria are met, if the ships aren't
10 properly secured - and the Coast Guard's going to have
11 some new method to ensure that - the ships and barges will
12 be sunk in place prior to the high water coming so that
13 they kind of sink and are not floating around. So that
14 was an important lesson learned.

15 --o0o--

16 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

17 This picture shows kind of the water's gone down
18 but these barges and ships that got loose also butted up
19 against railroad bridges that were not able to be raised.
20 And the results of that were higher water surfaces in the
21 Inter-Harbor Navigation Canal, which contributed to that
22 overtopping, that wave wash overtopping that we saw, and
23 could have caused a failure.

24 So we really -- the lesson learned here is that
25 we really need to secure those barges and ships from

1 preventing them from doing damage to the flood control
2 system, but also from butting up against bridges that
3 can't be raised because of their age and exposure to high
4 wind loads if they are raised, which can cause higher
5 water surface elevations.

6 The Corps does have a long-term plan to put a
7 gated plug or a gated dam within the Inter-Harbor
8 Navigation Canal that will prevent the high storm surges
9 from getting into that canal. So essentially close it off
10 for navigation during a rare hurricane event. And when
11 the hurricane event is passed, then you can open the gates
12 and allow for the shipping.

13 Just an interim closure structure with gates is
14 the largest Corps-design built project ever awarded, and
15 it went to Shaw Engineering. And it started off about --
16 I think about 800 million, and right now the expected cost
17 is about 1.3 billion. And it's considered interim.

18 --oOo--

19 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

20 This is a picture of -- and in the background you
21 see a railroad bridge. The water's gone down a little
22 bit. But essentially that bridge was partially submerged
23 under the flood waters. Again, the bridge couldn't be
24 raised because of its age. It's a bastion bridge, which
25 essentially means it's pinned at one end. And when it

1 needs to rise for -- be raised for navigation, it raises
2 up like a cantilever. And because of the wind loads, it
3 couldn't -- the port did not want to raise it. It was
4 built near the turn of the century. New bridges are like
5 our Sacramento Tower Bridge, that the whole bridge section
6 raises up. So they couldn't raise it. And the concern
7 there was that bridge could be washed away and cause
8 damage to the flood walls or -- no, and that the
9 submergence of the bridge caused hydraulic impacts.

10 So the lesson that we learned here is we've got
11 to look at all this infrastructure that's crossing our
12 river, and we want to make sure that bridges that are
13 submerged because of their height during a flood event
14 don't wash away and cause damage to our structure and
15 other facilities downstream. And we need to factor in to
16 account for the hydraulic impacts if they are going to be
17 submerged. So we may have to do some -- the hydraulic
18 impacts would be the upstream water surface being higher.
19 The Army Corps built the floodway harbor system in New
20 Orleans. They couldn't protect all the industrial
21 facilities, so some remained on the waterside. So those
22 facilities got wet. No big deal. They're planned to get
23 wet.

24 And the lesson here is if you have a structure in
25 a wet zone, you know, say, for example, our Sutter Bypass

1 or Yolo Bypass or park facilities along the Sacramento or
2 American River, you want to use flood resistant materials.
3 So this was expected and it was -- we need to continue to
4 refine the science of flood resistant materials. And the
5 Corps and FEMA have an effort on that and they have a
6 technical bulletin about flood resistant materials.

7 --o0o--

8 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

9 This is an aerial view, and you see kind of a
10 straight waterway in the background. This is the famous
11 17th Street Canal, which there are levees there and there
12 are flood walls on top of the levees. In the foreground
13 here is like Pontchartrain. So in the background you head
14 towards the Mississippi River. This is essentially a
15 drainage canal. It doesn't connect with the Mississippi,
16 but it takes all the rain water and surface water from the
17 bowl that is New Orleans and it's pumped to the lake.

18 During Katrina, the storm surge from Lake
19 Pontchartrain was pushed up that canal. A lot of the
20 water got against the flood walls and failed the flood
21 walls at various locations along the 17th Street Canal and
22 the London Avenue Canal and also along the Inter-Harbor
23 Navigation Canal.

24 So the lesson here learned is in the -- in the
25 foreground you see kind of a structure that kind of looks

1 like it goes across the canal. And those are interim
2 gates that the Corps of Engineers has put in. And we'll
3 get a little close-up view here.

4 --o0o--

5 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

6 And we see the gates here. They're on the right
7 of the screen. Those are vertical gates that close down
8 during a hurricane event. And to the left you see a
9 series of pumps. And this has -- this pumping station has
10 a capacity of about 12,000 cubic feet per second and is
11 considered an interim facility, meaning that the Corps is
12 working on -- the Corps and the locals and the state are
13 working on a long-term plan of gates and pumps for the
14 three outfall canals - 17th Street, London Avenue,
15 Orleans.

16 So the lesson learned here -- well, these were
17 closed. Two of them were closed. The gates along 17th
18 Street Canal were closed and the gates along London Avenue
19 were closed during Gustav. And the pumps were turned on
20 to pump the drainage water around the gates. Because
21 normally if you just have the gates there, you couldn't --
22 you would have interior flooding because you can't drain
23 the water out.

24 The smart decision that was made was that the
25 Corps was willing and Congress was willing to fund interim

1 gates and pumps rather than waiting for a long-term
2 solution. So if they wouldn't have -- if they wouldn't
3 have made this decision soon after Katrina in 2005 to
4 build the interim facilities, then again we would have
5 seen storm surge water against the flood walls. And I
6 don't know if they would have held.

7 But the system worked. The gates worked and the
8 hydraulic pumps worked, and there were no problems with
9 the water surface in those outfall canals. That was a key
10 decision to not wait for the long-term plan but to build
11 an interim facility for interim protection.

12 PRESIDENT CARTER: Mr. Pineda, this is very, very
13 interesting, but we're running short on time.

14 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
15 Okay. Last slide.

16 --o0o--

17 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
18 Ike hit around Galveston, Texas. Lots of areas
19 were flooded. Boats were ripped from their moorings and
20 caused damage to the boats of course and to other
21 structures.

22 Here's the main slide I wanted to show you. And,
23 that is, normally when you build on areas subject to
24 coastal wind and wave flooding, FEMA requirements are to
25 elevate. And the lesson here is that mitigation through

1 elevation doesn't always work. If the forces on the
2 structure are strong enough, whether those are wind or
3 wave, those structures are going to fail, as they did, and
4 many homes were lost. So the question for policy makers
5 such as the Central Valley Board and boards and
6 governments across the country is, you know, do we want to
7 allow construction of structures in high vulnerable areas
8 subject to natural disasters like hurricanes.

9 So that's all I wanted to share based upon the
10 question from the last Board meeting.

11 PRESIDENT CARTER: Thank you very much. That was
12 very informative, very interesting.

13 Are there any questions for Mr. Pineda?

14 VICE-PRESIDENT HODGKINS: Ricardo, I can't
15 remember if it was '86 or '97, but there were a lot of
16 houseboats that began to build up against the Rio Vista
17 Bridge, I think.

18 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
19 Right.

20 VICE-PRESIDENT HODGKINS: Have we thought about
21 working with the Coast Guard so that if we get in that
22 situation again, those boats get sunk before they get to
23 the Rio Vista Bridge?

24 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I
25 recall, Member Hodgkins, that after the '97 event, the

1 California Lands Commission started an effort, because
2 they're involved with permitting marinas and the navigable
3 waterways, trying to -- I'm not sure if it was a
4 regulation, but there was a dialogue that was started to
5 ensure that floating vessels were properly secured during
6 high water events along our river system. I'm not sure if
7 that discussion resulted in regulations or what. But I
8 know that after that, and we always have written in our
9 permits, we strengthen the special conditions in the
10 Central Valley Board permits for docks, essentially
11 saying, you know, strengthening language that boats
12 attached to those docks needed to be properly anchored or
13 secured during high water events.

14 So if that same issue came up and one of those
15 houseboats or things could cause a bridge to fail or cause
16 some other type of damage, that we need to factor into
17 account. So we need to follow up with the Department of
18 Boating and Waterways and the Lands Commission.

19 PRESIDENT CARTER: Any other questions for Mr.
20 Punia -- I mean Mr. Pineda?

21 Very good.

22 Thank you very much, Ricardo.

23 Ladies and gentlemen, let's take a ten-minute
24 recess. We'll reconvene here at 10:20. And we will skip
25 our consent items and move on to the timed items hearings

1 on Item 9A.

2 We do have the Three Rivers report and then we
3 will do the timed items. Thank you.

4 (Thereupon a recess was taken.)

5 PRESIDENT CARTER: Ladies and gentlemen, good
6 morning. If you could please take your seats, we'll go
7 ahead and continue with our meeting today.

8 I want to remind you we just wrapped up the
9 report of the activities of Department of Water Resources.
10 We are running a little bit behind schedule. We will have
11 a brief report from Three Rivers Levee Improvement
12 Authority. And then we'll move on to timed items.

13 I also want to mention in case some of you were
14 not here when we approved the agenda, we have moved Item
15 11 to follow Item 12. So that Item 11 will be heard after
16 lunch after Item 12, just in case some of you didn't know.

17 So with that, we'll move on to Item 7, Three
18 Rivers Levee Improvement Authority Monthly Report. And,
19 Mr. Dacus, you're here to do that on behalf of Mr.
20 Brunner?

21 MR. DACUS: I am. Thank you.

22 PRESIDENT CARTER: Good morning.

23 MR. DACUS: Good morning.

24 My name's Larry Dacus. I work with MBK Engineers
25 and I am the design manager for Three Rivers Levee

1 Improvement Authority.

2 You have our written status report that we
3 submitted every month. And I'll be glad to answer any
4 questions on that if you have any.

5 But my main purpose today was to discuss the
6 crack that occurred in a portion of the levee that we were
7 reconstructing last month. So I'll focus on that, and
8 then at the end answer questions on anything that you
9 might have, if that's okay.

10 PRESIDENT CARTER: That's fine. We can -- let's
11 address the crack, and we'll ask if there are any
12 questions regarding the monthly report after you address
13 the crack.

14 MR. DACUS: Okay. Well, with that, what I'd like
15 to talk about is that we did -- in September 10th we did
16 have a crack develop over about 550 feet of the levee.
17 This is on landside of the levee here. And it's about a
18 third to a quarter of the way down the top of the levee.
19 This crack developed while we were completing
20 reconstruction of the waterside embankment after
21 installing a soil bentonite slurry wall in the foundation.

22 When the crack became apparent, we immediately
23 ceased operations in that area. We began a series of --
24 installing a series of monitoring devices that included
25 cross-sectional transects, monuments to monitor the crack

1 widths. We did two borings into the levee itself. And in
2 those borings we installed inclinometers. And
3 inclinometers are devices that measure movement in a
4 column of earth, so that you can see from the top to the
5 bottom how that earth mass might be moving.

6 We began to monitor those -- all of those
7 monuments. We began a series of stability analysis to try
8 to determine what would have been the mechanism for this
9 crack to develop, analyzing the borings that we're taking
10 where the inclinometers were installed.

11 On September the 27th we went out and we did two
12 test pits on the back of the levee in the vicinity of the
13 crack to see how far down these cracks went actually into
14 levee. What we discovered with those test pits was that
15 within about two to three -- the cracks at the surface of
16 the levee were about three-quarters of an inch wide on the
17 north end and almost two inches wide on the south end.
18 And we discovered through that test pit excavation -- and
19 at that excavation were members of the Corps of Engineers
20 and the Department of Water Resources, I think maybe some
21 people representing the Board staff were there as well,
22 all to observe this excavation -- the cracks narrowed down
23 to a hairline crack within about two to three feet of the
24 surface. They were vertical -- to near vertical. They
25 did not go into the levee. They went down into

1 the -- into the foundation.

2 And so that's pretty much what we found with
3 those excavations.

4 After all of that information, we put out a
5 memorandum to a series of people on October 1st. And then
6 on October 3rd we held a meeting to discuss the memorandum
7 and the results of our observations, results of our
8 stability analysis. At that October 3rd meeting we had
9 representatives from DWR, the Board staff, from the Corps
10 of Engineers.

11 And what we have presented as what we think is
12 occurring at this location is -- let me see if I can --
13 what we found is that deep into the foundation there is a
14 deposit of softer clays than we had anticipated there --
15 or in what we had seen in previous borings. These clays
16 are somewhat limited in their lateral extent. But what
17 appears to be happening is that some of this mass is
18 appearing to try to creep along this clay layer, and at
19 the same time all of this work on the waterside is causing
20 some differential settlement in the softer clay layer. So
21 we're doing some recompacting, putting some slightly
22 higher -- more weight on this side so that you've got more
23 compression occurring here and you'd get this rotation
24 that happens here.

25 So between those two mechanisms, we have this

1 crack that has developed up here. It's more than likely
2 that this crack developed at a point in time during the
3 construction when we had a very -- or hardly any forces on
4 this side. When you construct these slurry walls, you
5 know, we -- especially in the toe of a levee like this,
6 you excavate a large amount of the embankment out. You
7 make an inspection trench here. And then you excavate
8 this slurry trench. And to keep that trench open you put
9 in a mixture of sand, bentonite, and water. And so at
10 that point in time was probably the weakest point in time
11 in this cross-section throughout this construction
12 process. And in fact our stability analysis said that
13 probably more than likely the factor of safety dropped
14 below 1 at some point when we only had slurry in this
15 trench.

16 We've analyzed this after -- post-construction
17 with the soil bentonite wall in place with the cap on the
18 wall and with the embankment back in place. And all of
19 those factors of safety have come up greater than 1. And
20 we've also analyzed it for a rapid drawdown analysis and
21 for the final steady state stability analysis.

22 During our meeting on the 3rd we discussed a
23 couple of things that we could do at this point in time
24 because we're so late in the season. We talked about
25 maybe going back here and reexcavating and putting a

1 higher mound on here. But that would again expose us to
2 this less than 1 factor of safety. We didn't think that
3 was the right thing to do. Most everyone -- we laid out a
4 series of actions. Most everyone came to a consensus that
5 probably the best thing to do is to continue monitoring
6 this section through the winter. We've actually installed
7 two additional inclinometers on each side of the slurry
8 wall down here at the toe, one on the east side and one on
9 the west side, to see how much of this soil is moving this
10 way. The recent measurements of the monuments that we
11 have out there show that this movement is slowing down and
12 more than likely is going to stop as this wall
13 consolidates here.

14 And at the same time, we are preparing an
15 emergency plan that could be implemented if needed. We
16 don't see -- all of our analysis indicates that this is
17 going to be a stable wall through the winter. It'd be a
18 stable wall if water got up against it through the winter
19 and dropped down. And we think that the best thing to do
20 is to monitor the situation through the winter, come back
21 in the spring, check our information at that point in
22 time, get back again with all of the experts, and decide
23 if there's any additional work that needs to be done in
24 this particular area.

25 That's my very brief overview of that. And I'd

1 be glad to answer any questions you might have.

2 PRESIDENT CARTER: Are there any questions for
3 Mr. Dacus?

4 SECRETARY DOHERTY: Yeah, you mentioned emergency
5 plans. What are your contingent emergency plans?

6 MR. DACUS: Well, I want to get with some other
7 people to talk about those. That's what we're putting
8 together. We're going to be developing that in the next
9 few weeks in coordination with the Corps and DWR as to
10 what sorts of things should we be looking for and what we
11 would do if those were to develop.

12 I think probably the most -- I think the most
13 critical thing that we're looking for is if all of a
14 sudden this thing should begin to move very quickly and
15 much more demonstrably out towards the river. In that
16 case we might try to bolster the waterside with some more
17 weight, maybe rocks on that side. I've heard someone talk
18 about possibly driving sheetpiles into the levee to try to
19 pin it in place. But we want to get a couple of options
20 and then we want to be prepared to implement those options
21 if they're required.

22 SECRETARY DOHERTY: You said that the clay proved
23 to be softer than you had thought it would be?

24 MR. DACUS: Softer than what our previous borings
25 had indicated, yes.

1 SECRETARY DOHERTY: I thought it had all been
2 tested previous to the work on the levee.

3 MR. DACUS: Well, when you go out and do this
4 sort of work, you put a lot of holes. We have
5 geotechnical borings in this levee probably every 500 to
6 1,000 feet, which is the standard for evaluating these
7 types of levees. But as any geotechnical engineer will
8 tell you, there's always these little isolated pockets of
9 things that can occur. That, you know, if you did a
10 200-foot spacing or a 100-foot spacing, there's always
11 something that you might miss in that area. And in this
12 case this particular pocket of soft clay occurred in
13 between borings that we had, so we had no indication that
14 it was there. We analyzed both sides -- well, we analyzed
15 that whole reach using information from borings that we
16 had in the area. But we had no borings at that particular
17 spot that would indicate those clays were present.

18 SECRETARY DOHERTY: At what date do you have to
19 stop work on this levee? Is it the 30th of October?

20 MR. DACUS: Thirtieth of October, yes.

21 SECRETARY DOHERTY: And you're just now going to
22 talk about emergency things. Shouldn't that maybe be
23 already in place?

24 MR. DACUS: Well, I think it should be in place
25 as quickly as possible. What we have been doing since the

1 crack was observed is we've been analyzing the situation,
2 we've been installing these monitors, we've been getting
3 additional information so that we could try to understand
4 what the mechanism of movement is there. And we think
5 that we have done that. And so now it's taking this
6 information that we have, thinking about what could
7 possibly occur during a high water event -- or during the
8 winter, and then coming up with means to take care of
9 those.

10 SECRETARY DOHERTY: Thank you.

11 BOARD MEMBER BROWN: I would guess that the clay
12 would be expansive once it gets wet. And instead of being
13 soft and settling, I would -- if I just had to hip shoot
14 it, I would think that it would be expansive and your
15 problem would be one of expansion. That's one.

16 Show me where your cutoff wall -- your cutoff
17 wall is right there in the center of the berm?

18 MR. DACUS: Actually there are two cutoff walls.

19 BOARD MEMBER BROWN: What's the first one there
20 for?

21 MR. DACUS: This one here is a cutoff wall that
22 was installed by the Corps of Engineers back in 1997-98.
23 It's a soil cement bentonite cutoff wall. It's existing.

24 This is the soil bentonite cutoff wall that we
25 just installed, this on the waterside toe.

1 BOARD MEMBER BROWN: Which one? Point to it.

2 MR. DACUS: Oh, I'm sorry. This one here.

3 BOARD MEMBER BROWN: That's the one that you're
4 stalling?

5 MR. DACUS: That's the one that we have just
6 completed.

7 BOARD MEMBER BROWN: And that's the one that has
8 a factor less than 1?

9 MR. DACUS: During construction and at some point
10 in time when we only had the slurry in there to keep the
11 trench open, we passed through a condition where we
12 probably had a factor of safety less than 1.

13 BOARD MEMBER BROWN: Wouldn't regular drilling
14 mud for wells and such give you a factor greater than 1?

15 MR. DACUS: It doesn't provide -- that kind of
16 slurry -- trench slurry doesn't provide that much
17 resistive pressure to this massive berm.

18 BOARD MEMBER BROWN: What are you putting in it
19 to keep it open?

20 MR. DACUS: I believe it's a sand bentonite.

21 Water and bentonite, just because the -- you tend
22 to follow that excavation as quickly as possible. In fact
23 we in our specifications say that this trench can only be
24 open for I think it's 100 feet in our specs. Is that
25 correct, Dan? -- in front of the backfill that comes in

1 behind that. So it's a very short period of time that you
2 only have just the slurry information -- the slurry in
3 there.

4 BOARD MEMBER BROWN: And what's the purpose of
5 the other cutoff wall? Is it the -- the one the Corps put
6 in is not functioning or what?

7 MR. DACUS: Well, when the Corps evaluated these
8 back for the Sac evaluation study, they were really
9 focusing on through-seepage type issues that were
10 occurring in these levees. So this levee is fairly short,
11 and it was really installed to take care of some sand
12 lenses and things that might be in this -- you know, in
13 the foundation just below the levee.

14 As we have come in -- and recently, you know,
15 underseepage has become a much more driving force on these
16 levee corrections. And so we did discover some deeper
17 sands and gravels that could pose an underseepage problem.
18 So we felt the need to come in and put in a much deeper
19 slurry wall.

20 BOARD MEMBER BROWN: How much deeper?

21 MR. DACUS: I think this slurry wall goes down to
22 about 20-foot elevation. And the one that we put in is
23 down to about a minus 6. So we're about 25, 30 feet
24 deeper. And that's one reason why -- one reason we didn't
25 go through the levee is that we already had a wall here

1 and there would be some construction conflicts. The
2 reason we're in this toe was so that we can get that
3 deeper -- that wall very deep down in there to cut off
4 those gravel and sand layers.

5 BOARD MEMBER BROWN: How'd you know that you
6 needed to do that? Was it through piezometers or boils
7 or --

8 MR. DACUS: Looking at the borings that we did
9 have in the levee and -- and we actually have taken
10 borings on the waterside of this levee.

11 BOARD MEMBER BROWN: And the borings --

12 MR. DACUS: So we took deeper borings than what
13 maybe the Corps did take back in the early -- or late
14 eighties, early nineties.

15 BOARD MEMBER BROWN: And where you took plugs
16 out, or how did --

17 MR. DACUS: Well, when you do these borings, you
18 do take samples out. But you log them as you're doing
19 them. Just like any well or anything like that, there's a
20 geologist there on hand that logs the type of material
21 that's coming out of that boring as it goes down, so he
22 can tell you if it's clays, whether there are hard, stiff
23 or soft clays, whether it's sand with silt. There's an
24 entire boring log as you take these borings out.

25 BOARD MEMBER BROWN: What was the resulting

1 factors that determined the interior cutoff wall?

2 MR. DACUS: This cutoff wall here?

3 BOARD MEMBER BROWN: No, the other one. What
4 made you decide that you needed to do that? You had your
5 borings. What did you get from the borings?

6 MR. DACUS: We got indication of sand and
7 possibly gravel. I don't know exactly here whether they
8 were both sand and gravel or whether he have sand and
9 gravel layers in this foundation with a clay layer
10 underneath. We went back and we did seepage analysis that
11 indicated that with that type of foundation we'd have exit
12 gradients at the toe of the levee that would be greater
13 than the criteria that we're using for design. And so to
14 lower those exit gradients we proposed this soil bentonite
15 wall.

16 BOARD MEMBER BROWN: Okay. So you did a soil
17 analysis to make that determination. But did you also
18 observe on the landside conditions in the past that
19 would -- like boil or such, that would determine the
20 necessity of doing that?

21 MR. DACUS: I can't say -- I can't say that in
22 this exact location we have seen boils. There have
23 been -- there's a long record of boils up and down the
24 Feather River levee at other locations. But at this exact
25 location, I don't remember -- I can't say for certain that

1 there was a boil observed there.

2 BOARD MEMBER BROWN: What about porotic pressures
3 on the landward side?

4 MR. DACUS: There's not that much information to
5 talk about what kind of pressures are back there. Usually
6 we -- when we do our seepage analysis is when we get an
7 indication of what sort of pressures are possible during a
8 flood event.

9 EXECUTIVE OFFICER PUNIA: If I may. This site is
10 where we have observed seepage every time there's a high
11 water. For the sake of reference, this is the Star Bend
12 site where we had to stop during our tour. So this is the
13 area just close to that site. And Star Bend area is
14 famous for seepage.

15 BOARD MEMBER BROWN: Thank you.

16 PRESIDENT CARTER: Any other questions for Mr.
17 Dacus?

18 Any questions on the monthly report that was
19 submitted by Three Rivers Levee Improvement Authority?

20 Very good.

21 Thank you very much, Mr. Dacus.

22 MR. DACUS: I would just like to close, that we
23 do take this very seriously. We're out there. We're
24 monitoring it. We're going to watch it very closely.
25 This is something that we want to keep our eye on.

1 PRESIDENT CARTER: We appreciate that.

2 Okay. Ladies and gentlemen, we're going to move
3 on to our hearings. Item 9A at this time.

4 I'd like to remind the Board staff and public
5 that our procedure for the hearing is to have a Board
6 staff presentation, then we will entertain public
7 testimony regarding the application, rebuttal testimony by
8 the applicant, and then the Board will deliberate
9 following public testimony.

10 So with that, I'd like to call a hearing to order
11 on consider approval of Permit No. 18374 to plant native
12 trees, shrubs, grasses within the designated floodway on
13 the right bank of the Sacramento River.

14 And, Mr. Lemon, you're here on behalf of the
15 staff?

16 MR. LEMON: I am. I'm pinch-hitting for Mr.
17 Steve Dawson.

18 PRESIDENT CARTER: Thank you very much.

19 MR. LEMON: President Carter, members of the
20 Board. My name's Gary Lemon. I'm with Department of
21 Water Resources, Division of Flood Management, Floodway
22 Protection Section.

23 As mentioned, this is a project for restoring 87
24 acres of habitat at the confluence of Jewett Creek and the
25 Sacramento River, River Mile 214. That's quite a distance

1 above the water project. The project is located on
2 private property and is funded by a grant from the
3 Wildlife Conservation Board. Plantings will produce four
4 riparian communities: Mixed Riparian forest, Valley Oak
5 Riparian Forest, Jewett Creek Waterway, and some
6 grassland. There will be no elderberry plants established
7 in this habitat restoration project. Hydraulic impacts
8 for the project were shown to be insignificant.

9 The lead agency as far as the restoration
10 component of this project is The Nature Conservancy. And
11 Mr. Gregg Werner is here today to explain the project in a
12 little bit more detail and to answer some of your
13 questions if you have any.

14 So with that, I'll ask Mr. Werner to come up.

15 PRESIDENT CARTER: Are there any questions for
16 Mr. Lemon.

17 VICE-PRESIDENT HODGKINS: This is well above the
18 leveed section of the Sacramento River Flood Control
19 Project, is it not?

20 MR. LEMON: Correct. It's designated floodway.

21 PRESIDENT CARTER: Okay. Mr. Werner.

22 (Thereupon an overhead presentation was

23 Presented as follows.)

24 MR. WERNER: Good morning. We're bringing to you
25 today a habitat restoration project that's a joint effort

1 of the landowners, the Ginno family, and The Nature
2 Conservancy.

3 --o0o--

4 MR. WERNER: The property is located about seven
5 miles south and east of Corning, California. It's on the
6 west side of the Sacramento River. It's also about a mile
7 and three-quarters south of Woodson Bridge State
8 Recreation Area.

9 --o0o--

10 MR. WERNER: We've been involved with the
11 property for a number of years now. We purchased the
12 property in 1999. We initiated then a very intensive
13 planning process, working with neighbors and other
14 stakeholders, that resulted in the Jewett Creek integrated
15 farm plan in 2001. The concept was to evaluate the
16 property in substantial detail working with the neighbors
17 and develop a strategy for pursuing both agriculture and
18 wildlife habitat on the property.

19 And that plan was developed. We did apply the
20 generalities of the plan to the property through a
21 conservation easement. The property was then put on the
22 market and purchased by the Ginno family in 2006. And
23 they purchased it with the conservation easement in place
24 that specified where restoration could occur, so that they
25 were kind of involved and bought into that project from

1 the inception of their ownership.

2 In 2008, we completed the restoration plan and
3 the securing of the funding. It is primarily funded
4 through the Wildlife Conservation Board but with
5 supplemental funding and gap filling through the U.S. Fish
6 and Wildlife Service, through The Nature Conservancy, and
7 through the Ginno family.

8 Our objective is to initiate restoration
9 plantings this spring, subject to gaining the approval
10 today.

11 --o0o--

12 MR. WERNER: The project itself is different than
13 most restoration projects in that it is, as I mentioned, a
14 combination of wildlife habitat and farming on the
15 property.

16 The property currently has a substantial area
17 developed and devoted to walnuts, and most of that would
18 be retained. It would be approximately 120 acres that
19 would be maintained in agriculture and would stay in the
20 walnut orchard.

21 The property has about 83 acres of riparian
22 habitat. That area has been growing as the river's
23 gradually moved to the east over the last 30, 40 years.

24 About 17 acres would continue to be dedicated, as
25 it is now, to the Jewett Creek waterway. As Jewett Creek

1 comes down towards the Sacramento River, there's kind of a
2 wide bowl that the creek occupies in that area. That's
3 currently open. That would stay open. About 10 acres
4 would be a native grassland. And about 60 acres would be
5 in riparian habitat.

6 As Mr. Lemon mentioned, there would be no
7 planting of elderberries as part of this project.

8 --o0o--

9 MR. WERNER: The restoration plan then, which I
10 believe your Board had received, this exhibit shows what
11 would occur. And generally across the site from northeast
12 to southwest you'd have Jewett creek. There would be a
13 substantial area maintained as it is now for the flows of
14 Jewett Creek.

15 If you look to the north, you'll see that the
16 creek channel is substantially smaller and substantially
17 more limited by the orchard on the one side and the
18 remnant Valley Oak Riparian Forest on the other side. So
19 within this particular property and then as shared with
20 the property to the south, there will be a substantial
21 area maintained for the floodway itself.

22 The --

23 PRESIDENT CARTER: Mr. Werner when you're doing
24 that -- when you're referring to areas, could you point to
25 them with the cursor or something so we --

1 MR. WERNER: Okay. So Jewett Creek is this area.
2 And as I mentioned to the north there's much less open
3 space.

4 BOARD MEMBER BROWN: Does that creek drain into a
5 very large watershed, do you know?

6 MR. WERNER: I don't have the specifics. It does
7 go a little ways to the west of I-5, I know, near the City
8 of Corning. It doesn't go nearly over to the foothills
9 though. So it's one of the small valley-only drainages, I
10 believe.

11 BOARD MEMBER BROWN: Okay.

12 MR. WERNER: If we can get the -- okay. I
13 apologize. It's picking up the mouse automatically.

14 All right. So, again, the majority of the
15 property has been devoted to walnuts. The east side of
16 the property is remnant riparian, as I mentioned. That's
17 been growing as the rivers meandered to the west into the
18 national wildlife refuge and state wildlife area in the
19 recent years.

20 BOARD MEMBER BROWN: Next to the river you're not
21 planting anything though, right?

22 MR. WERNER: No, no. That would remain in its
23 existing state. There's very poor soils directly
24 adjoining the river. You've got a gravel bar, you've got
25 a little bit of shrub area, and then on the west edge some

1 mixed riparian forest.

2 The areas that would stay in agriculture are on
3 the west side and then this large block in the center,
4 which constitutes the best soils and the area that's best
5 suited to the long-term growth of the walnuts.

6 Areas that would be converted to riparian
7 vegetation, there would be an area of mixed riparian
8 forest on the east side. This is generally area that's
9 slightly lower, more frequently inundated.

10 As part of our working with the adjoining
11 residents -- or, excuse me -- the adjoining landowners, to
12 the north there are landowners that do have land adjacent
13 to the proposed restoration. They're Chuck Crane on the
14 east and Curt Martin on the west. We worked extensively
15 with them as the plans were being done and the hydraulic
16 analysis. And there's a specific plan for a grassland and
17 shrub buffer adjoining their properties. There's also a
18 grassland area that will continue to accept flood flows to
19 the greatest degree within the area.

20 Again, the mixed riparian forest is on the east
21 where it's a little lower; the valley oak forest area
22 here; and up here are, in areas that are a little higher,
23 less frequently inundated. And the mixed riparian forest
24 will be similar to the mixed riparian forest that's
25 adjacent on the east. The valley oak riparian forest will

1 be most similar to the valley oak forest that exhibits on
2 Mr. Martin's property to the north.

3 SECRETARY DOHERTY: So in the southerly portion
4 there you're taking out orchards?

5 MR. WERNER: This area orchard would be removed,
6 yes, in here. Again, it's a lower area, floods a little
7 more often, also has a little poorer soils than the land
8 farther north.

9 BOARD MEMBER BROWN: Is there any high
10 groundwater that results in that area, do you know?

11 MR. WERNER: I think there is some. I'd have to
12 go back to the earlier work to give you any detail though.

13 PRESIDENT CARTER: And you said the neighbors to
14 the west are who?

15 MR. WERNER: Well, to the north you have Chuck
16 Crane, Crane Orchards, to about this point, and this area
17 is Curt Martin. I would have to check on the folks to the
18 west and to the south, but basically things are not
19 changing adjoining them. Where the change would occur is
20 in this area and over here.

21 Through the Jewett Creek planning process - all
22 the neighbors were involved - we also did another round of
23 notifications and discussions as the Sacramento River
24 Conservation Area Forum reviewed the proposal for funding
25 to the Wildlife Conservation Board. We've worked most

1 though with Mr. Crane and Mr. Martin, because they're the
2 folks most directly affected, and worked out the concepts
3 of the buffer. And both have indicated that they were
4 satisfied with the resulting situation and with the impact
5 as modeled in the hydraulic analysis.

6 PRESIDENT CARTER: The grassland buffer, how wide
7 is that? You said it was extensive.

8 MR. WERNER: As I recall, this is about 100 feet
9 wide. And then there's an area that is grassland with
10 shrubs only, and so the trees are a hundred and some feet
11 back. And actually Mr. Crane had indicated quite recently
12 in a letter that he was desirous of that. One of the
13 things that he wanted to see was an area where there
14 wasn't the denser vegetation directly adjoining his
15 orchard. Although they have that situation already on the
16 east.

17 Perhaps to go on, again we think this is a
18 compatible mix of agriculture and wildlife habitat. It's
19 been thoroughly vetted with the neighbors. The hydraulic
20 impacts have been modeled, reviewed by your staff, found
21 to be not significant. With the Ginno's, we are anxious
22 to move forward. With your approval, we'll be able to
23 move forward and begin planting this spring.

24 And I would be happy to answer any questions I
25 might.

1 PRESIDENT CARTER: Are there any questions for
2 Mr. Werner?

3 You mentioned hydraulic analysis. There was
4 nothing in here that -- or there's no analysis. Has our
5 staff reviewed that hydraulic analysis, who performed it,
6 when was it done, was it one dimensional, was it two
7 dimensional? Tell us about that.

8 MR. WERNER: Okay. The work was done by Ayres
9 Associates, who's done most of the work along the river.
10 And in this particular area it was two dimensional
11 modeling. The report is dated April 2008, and I believe
12 it was reviewed by your staff and part of the submission.

13 PRESIDENT CARTER: Okay. And there was also no
14 information in the staff report -- or there was no
15 documentation in the staff report regarding comments by
16 the locals and whatnot.

17 Do you have letters of support from the adjacent
18 property owners?

19 MR. WERNER: We have a letter from Mr. Chuck
20 Crane dated September 21. I'd certainly be happy to
21 provide that. Mr. Martin didn't put his comments in
22 writing, but we did speak with him on a number of
23 occasions and meet and he indicated his agreement with the
24 project.

25 I think, to be honest, I would characterize

1 adjoining neighbors' perspective as being that they think
2 generally someone ought to be able to do what they'd like
3 to with their property as long as it's not illegal, as
4 long it doesn't impede flood flows in the area, and
5 doesn't have a substantive negative effect on them. And I
6 believe that's where we're at.

7 PRESIDENT CARTER: Okay. Yeah, it would be good
8 for you so supply copies of the letters from the locals.

9 MR. WERNER: Sure.

10 PRESIDENT CARTER: Are the Ginno's going to be
11 farming the remaining walnuts then?

12 MR. WERNER: Yes. So they'll operate it for the
13 walnuts. They'll also have hunting, some associated uses
14 within the riparian area. And they purchased it with that
15 in mind.

16 PRESIDENT CARTER: Okay. Any other questions?

17 BOARD MEMBER BROWN: Eighty-seven acres is the
18 valley oak area and the mixed riparian

19 MR. WERNER: The 87 --

20 BOARD MEMBER BROWN: -- on the picture there?

21 MR. WERNER: -- The Jewett Creek waterway that
22 will stay open, the native grassland, and the riparian
23 habitat.

24 BOARD MEMBER BROWN: Is there any work that needs
25 to be done with that local drainage ditch that cuts

1 through the property? Is that all right as it is? Or
2 does it need any improvement?

3 MR. WERNER: Well, especially in the area to the
4 north, the channel, you know, visually looks to be much
5 more restricted. The analysis that was done early on as
6 part of the planning process that involved neighbors
7 actually looked at Jewett Creek, and the finding was that
8 it's not ideal; but when you have, you know, major flows
9 there, you'd have flows in the river that are actually
10 higher and result in the back-up. So there's kind of a
11 diminishing returns on doing a whole lot in the creek.

12 BOARD MEMBER BROWN: Yeah, okay. All right.

13 PRESIDENT CARTER: Mr. Werner, the hydraulic
14 analysis, does it take into consideration -- or are the
15 roughness coefficients used there, they contemplate some
16 maintenance of the mixed riparian, remnant riparian, the
17 waterway, or do they basically assume that those
18 properties are going to go without maintenance in the
19 future?

20 MR. WERNER: Well, in the valley oak and mixed
21 riparian forests they use the highest Manning's roughness
22 values for both of those, assuming full development, you
23 know, over time, as opposed to just a partial. In terms
24 of the grasslands the assumption was that those would stay
25 in grasslands. The situation we have along the creek is

1 that the current owners, the Ginno's, the previous owners,
2 all the other owners in the area, keep those areas open.
3 If you go out there today, they are quite open. They have
4 an economic incentive to do that, because they need to
5 minimize the inundation of their walnuts within the area.
6 And so they would continue to do that just as they do
7 today and all their neighbors do.

8 PRESIDENT CARTER: So they'll be mowing the
9 grasslands or maintaining those in some way?

10 MR. WERNER: That's our expectation. And that's
11 how everyone does it out there now. If you go out there
12 now, the grass is very low.

13 PRESIDENT CARTER: There's something in the grant
14 that requires them to do that?

15 MR. WERNER: I don't think the -- in the Wildlife
16 Conservation Board grant it didn't directly speak to that.
17 But we've -- we work with Ginno's and they're quite aware
18 of the situation.

19 PRESIDENT CARTER: Okay. Any other questions of
20 the applicant?

21 EXECUTIVE OFFICER PUNIA: John wants to add a
22 staff --

23 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

24 President Carter. John Yego, Chief of Floodway
25 Protection Section.

1 To answer your question, it was Mr. Steve Dawson
2 of my staff reviewed the two dimensional hydraulic
3 analysis, and basically on the conclusions that there was
4 a slight increase in the water surface elevations, .1 to
5 .2 feet.

6 On the other question, based upon a discussion
7 with the neighbors, it was part of the application, page
8 2, and stated that they -- that the applicant has
9 discussed with Mr. Chuck Crane and Curt Martin of the
10 properties to the north, that they met with both Mr. Crane
11 and Mr. Martin and that they received the hydraulic
12 analysis, and they both stated that they do not have any
13 objection to the slight water surface elevation increase
14 on their properties.

15 PRESIDENT CARTER: So it indicates that there's a
16 one to two-tenths increase in water surface elevation in
17 that area as a result of the project?

18 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

19 That is correct.

20 BOARD MEMBER BROWN: But for a 200-year storm,
21 John, or what?

22 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO: For
23 a 100-year storm.

24 BOARD MEMBER BROWN: A 100-year storm?

25 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

1 Right.

2 MR. WERNER: I might mention, that's in a fairly
3 localized area that is kind of right up here and right up
4 here. So it's not across all the property or a
5 substantial area or other properties.

6 PRESIDENT CARTER: It would be helpful if we
7 could see that when we're reviewing these applications.

8 SECRETARY DOHERTY: You know, there's quite a
9 bend in the levees there -- oh, I meant, excuse me, in the
10 river. And would that cause any migration of the river
11 over on to the opposite side?

12 BOARD MEMBER BROWN: I'm really surprised that it
13 cause that much of a raise, Mr. Chairman, with everything
14 else that's out there.

15 MR. WERNER: That shows the exhibit. The two
16 areas in green, which are near the north part of the
17 property -- for reference, the property is this area.

18 PRESIDENT CARTER: So that's basically at the top
19 end of what's going to be the new -- what is that? --
20 riparian --

21 MR. WERNER: Right.

22 PRESIDENT CARTER: -- mixed riparian --

23 MR. WERNER: That's right.

24 PRESIDENT CARTER: -- and valley oak riparian?

25 MR. WERNER: Right. And again the estimate was

1 that it was one to two-tenths and with an inundation in
2 the area of 12 to 14 feet.

3 BOARD MEMBER BROWN: And that's just in the dark
4 green?

5 MR. WERNER: That's correct, are the only areas
6 affected.

7 BOARD MEMBER BROWN: So essentially it's your own
8 property?

9 MR. WERNER: It's part our property and part of
10 it is Mr. Martin over here and Mr. Crane over there. And
11 we did specifically meet with them and review the
12 situation. And I --

13 BOARD MEMBER BROWN: What's on those properties?

14 MR. WERNER: The area over here, Mr. Crane's, is
15 walnuts. The area over here on Mr. Martin's property is
16 about 80 percent riparian habitat and a small corner is
17 walnuts.

18 BOARD MEMBER BROWN: Okay.

19 PRESIDENT CARTER: And has the Corps commented on
20 this?

21 MR. LEMON: No, they have not.

22 MR. WERNER: I believe they have not yet.

23 PRESIDENT CARTER: Mr. Hodgkins.

24 VICE-PRESIDENT HODGKINS: Yeah. Does the Corps
25 have jurisdiction in the designated floodway portion of

1 the project?

2 CHIEF ENGINEER HESTER: No. We will submit this
3 permit application for the Corps' review. But typically
4 they send back a letter saying that it is not within their
5 jurisdiction and they have no comment.

6 VICE-PRESIDENT HODGKINS: Thank you.

7 PRESIDENT CARTER: Okay.

8 MR. WERNER: I believe -- actually we've been
9 continued over since about August waiting for the Corps
10 letter. If at all possible, we would like to move forward
11 because we're starting to get tight with being able to
12 plant this next year.

13 PRESIDENT CARTER: Is there anybody from the
14 Corps that can testify to the fact that that's the typical
15 practice, what Mr. Hester had indicated?

16 Anybody from the Corps here?

17 EXECUTIVE OFFICER PUNIA: I think Jim Sandner is
18 not here.

19 But the purpose of sending to the Corps is Corps
20 wants to make sure that there is no negative impact on the
21 federal flood control project. So if you are doing
22 something in the designated floodway, we as a courtesy
23 send to the Corps so that they can review it to make sure
24 it's not impacting the federal flood control project.

25 PRESIDENT CARTER: Right. Understand.

1 But we -- you and I and Mr. Hester recently had a
2 meeting with the Corps and the colonel and his staff, and
3 they expressed some concerns about some of these projects
4 and essentially the system-wide cumulative impacts of
5 these things. And their specific words were, "So, how
6 much is too much? When do we know when we are saturating
7 the system with vegetation within the floodway?" So I'd
8 sure like to hear from the Corps in terms of their
9 perspective on this.

10 They didn't have an answer at the time. That was
11 something that is to be determined. But they were very
12 concerned about the -- on a project-by-project basis,
13 these things don't have much of a hydraulic impact often.
14 But when you look at them from a system-wide perspective,
15 what is the impact? We don't know. They're concerned.

16 Is that not correct?

17 EXECUTIVE OFFICER PUNIA: That is correct. But
18 my recollection has been their comments were more
19 pertaining to the projects within the levees.

20 PRESIDENT CARTER: Okay.

21 BOARD MEMBER RIE: Mr. Punia?

22 EXECUTIVE OFFICER PUNIA: Yes.

23 BOARD MEMBER RIE: How long has their package
24 been at the Corps?

25 EXECUTIVE OFFICER PUNIA: John may have a date

1 when we sent this to the Corps.

2 Our practice is whenever we get the application,
3 right away we send it to the Corps. But because there's a
4 big backlog, the Corps is not able to review it right
5 away.

6 BOARD MEMBER BROWN: This brings up another
7 point, Mr. Chairman, that I think Jay will address later
8 on, is trying to get our projects out of the Corps and not
9 holding up projects that need to move ahead. So we'll
10 cover that a little later. But that is an issue.

11 PRESIDENT CARTER: Right, right.

12 BOARD MEMBER RIE: Do we have a date?

13 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

14 Yes. We received the application May 1st of this
15 year. And as soon as we received the application, we
16 forward a copy to the Corps of Engineers.

17 BOARD MEMBER RIE: So the Corps has had their
18 package since May?

19 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

20 That's correct.

21 BOARD MEMBER RIE: With no comments, no Emails,
22 nothing?

23 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: Not
24 directly.

25 BOARD MEMBER RIE: I guess I'm just wondering how

1 much longer are we going to wait for a response that
2 basically says they have no comments.

3 SENIOR ENGINEER BUTLER: Eric Butler, Staff of
4 the Board.

5 Just to clarify. The process -- we get an
6 application. It goes to the Corps immediately. Lately
7 Steve Dawson's been corresponding back and forth with
8 Corps staff as to, okay, we're going to elevate these
9 particular applications to the Board. So my estimation
10 without Steve being here to verify would be that the Corps
11 was probably asked to begin review of this project for the
12 August meeting, which was when it was originally
13 scheduled. I would guesstimate that would have been done
14 around June or July. So they've had July, August,
15 September, October roughly to look at it. And we're still
16 waiting for their comments.

17 BOARD MEMBER BROWN: We might need some type of a
18 legal interpretation here later on, Mr. Chairman. If the
19 Corps is going to continue to hold up these projects,
20 what's our alternatives legally? Can we move ahead
21 unilaterally or do we have to wait for their concurrence
22 or approval?

23 PRESIDENT CARTER: All right. Are there any
24 other questions for the applicant?

25 SECRETARY DOHERTY: Mr. Werner, I do have one.

1 Primarily the changes you're making are away from
2 the river, they're not within the river.

3 MR. WERNER: Right. They're a substantial
4 distance, several -- I guess a couple hundred yards back
5 from the river, yeah.

6 SECRETARY DOHERTY: And you had the gravel bar
7 there. And to the west of the gravel bar, were you
8 planting anything there?

9 MR. WERNER: To the west of the gravel bar, you
10 transition from open gravel bar to shrub, to a fairly
11 dense mixed riparian forest. And our planting is on the
12 other side of that.

13 SECRETARY DOHERTY: So the riparian forest is
14 already there?

15 MR. WERNER: Correct.

16 SECRETARY DOHERTY: And you're not altering that?

17 MR. WERNER: No.

18 PRESIDENT CARTER: Any other questions?

19 All right. Thank you very much.

20 At this point we'll open it up to public
21 testimony.

22 Are there any other persons in the public that
23 wish to testify in support of the project?

24 Does anybody wish to testify in opposition to the
25 application?

1 All right. Assuming there's no opposition, I
2 assume there's no rebuttal.

3 So if there are no other folks that want to
4 comment on the application, we'll go ahead and close the
5 public testimony portion of the hearing.

6 And what is the pleasure of the Board on this?
7 Any questions, comments, any motions?

8 BOARD MEMBER BROWN: A comment, Mr. Chairman.

9 This looks like a good project to me, and I like
10 the usage of that land. And on that basis I'll make a
11 motion that we approve the project and then open it up for
12 Board discussion.

13 SECRETARY DOHERTY: I'll second it.

14 PRESIDENT CARTER: Okay. We have a motion to
15 approve and a second.

16 Discussion?

17 VICE-PRESIDENT HODGKINS: Well, the one comment
18 that I'd like to make is -- you know, we have seen
19 instances where the federal government and the state have
20 not been good stewards of restoration areas at least here.
21 And I really appreciate TMC doing this. The property is
22 being returned to private ownership. It's hopefully going
23 to be somebody who's concerned about being a good steward
24 of the land. And so from my standpoint, that's a better
25 approach than creating state and federal environmental

1 restoration areas. So I think it's a very good project
2 too.

3 PRESIDENT CARTER: Any other comments?

4 BOARD MEMBER SUAREZ: I have a question, point of
5 clarification.

6 Are we going to make issuance of this permit
7 contingent in receiving the letter from the Corps when we
8 already know that the Corps's going to say, "We probably
9 don't care"? It seems that we should -- and this is part
10 comment also -- we should be helping the Corps
11 differentiate between permit applications that really
12 require their immediate action and those that really -- it
13 would be nice to get some communication from them but
14 shouldn't hold our ability to issue the permit and these
15 folks get the final assurances they've been waiting for
16 for a while.

17 So I would like to propose to make this one an
18 issuance of the permit and not make it pending receiving a
19 letter from the Corps.

20 PRESIDENT CARTER: I believe Mr. Brown made the
21 motion to approve without any conditions.

22 BOARD MEMBER BROWN: (Nods head.)

23 PRESIDENT CARTER: And that was seconded

24 SECRETARY DOHERTY: Yes.

25 PRESIDENT CARTER: Okay.

1 BOARD MEMBER BROWN: I'm certainly open, Emma, if
2 you want to go ahead and add any amendments to the motion.

3 BOARD MEMBER SUAREZ: As long as it's clarified,
4 it's clear on the record that this is an okay for them to
5 go without any type of holdup, I'm satisfied.

6 PRESIDENT CARTER: Okay. Any further discussion?
7 Questions?

8 Board staff, applicant wish to comment, add
9 anything to the discussion?

10 SENIOR ENGINEER BUTLER: I would.

11 Again, Eric Butler, staff from the Board.

12 I'd just like to point out again with reference
13 to this photograph that you're looking at on the view
14 screens, that the overall light green area is really at
15 the hundred-year flood elevation. Those are flood
16 inundations on the range of 10 to 14 feet that we would
17 normally experience in a 100-year event. The two little
18 green areas are just small blips, if you will, in that
19 water surface elevation, probably created slightly by
20 backwater effect of the plantings.

21 So really what you're seeing here is a projection
22 of their anticipated increases in water surface elevation
23 of one to two inches in that whole picture. So I think if
24 there's any concerns over the hydraulic analysis, this
25 shows you just have two minor little spots that are

1 impacted. And I think we can all conclude that those
2 impacts are negligible.

3 Thank you.

4 PRESIDENT CARTER: Mr. Butler, the bounds of the
5 light green area, are those private levees or are they
6 some sort of -- what features are kind of confining it to
7 that? It's not -- or is it 14 feet up to there or is
8 it --

9 SENIOR ENGINEER BUTLER: The east and west
10 boundaries you're essentially looking at the floodway.
11 And that's the extent of the designated floodway above the
12 levee section.

13 PRESIDENT CARTER: So the inundation tapers off
14 to that level?

15 SENIOR ENGINEER BUTLER: That would be correct.

16 PRESIDENT CARTER: These are just natural
17 geographic or topographic bounds?

18 SENIOR ENGINEER BUTLER: That's correct, yes.

19 PRESIDENT CARTER: Okay. So you'd expect
20 inundation at the river to be 14 feet and then tapering
21 from there --

22 MR. WERNER: It's over 30 in the channel.

23 SENIOR ENGINEER BUTLER: Why don't you address
24 that.

25 MR. WERNER: Perhaps there's -- we've got an

1 exhibit, if you'd want.

2 It's over 30 feet in the channel. As you move
3 out into the floodplain, it's less. In those particular
4 areas it's projected at 12 to 14 feet. And then you start
5 to get to areas where the topography rises and you'd zero
6 out on the edges of the green.

7 PRESIDENT CARTER: Thank you.

8 Okay. Any other questions?

9 BOARD MEMBER RIE: Comment.

10 PRESIDENT CARTER: Comment.

11 BOARD MEMBER RIE: Item No. 30 in the permit says
12 a letter from the Corps of Engineers is attached to the
13 permit as Exhibit A.

14 Do we want to delete that condition?

15 PRESIDENT CARTER: Mr. Brown.

16 BOARD MEMBER BROWN: I'm certainly open to
17 deleting it. And let's see what happens.

18 SECRETARY DOHERTY: That's fine.

19 PRESIDENT CARTER: Okay. So we've --

20 BOARD MEMBER BROWN: I'm open to an amendment to
21 my motion.

22 SECRETARY DOHERTY: And I'll second your
23 amendment.

24 PRESIDENT CARTER: Okay. So the motion before us
25 at this point, ladies and gentlemen, is to approve the

1 permit as submitted with the change of deleting Condition
2 30 on page 3 of the permit, the last condition, which
3 states that a letter from the Department of the Army dated
4 October is attached as Exhibit A. That paragraph will be
5 deleted.

6 Any other questions?

7 All right. Mr. Punia, would you call the roll
8 please.

9 EXECUTIVE OFFICER PUNIA: Board Member Emma
10 Suarez?

11 BOARD MEMBER SUAREZ: Aye.

12 EXECUTIVE OFFICER PUNIA: Board Member Butch
13 Hodgkins?

14 VICE-PRESIDENT HODGKINS: Aye.

15 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

16 BOARD MEMBER RIE: Aye.

17 EXECUTIVE OFFICER PUNIA: Board Member John
18 Brown?

19 BOARD MEMBER BROWN: Aye.

20 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

21 SECRETARY DOHERTY: Aye.

22 EXECUTIVE OFFICER PUNIA: Board President Ben
23 Carter?

24 PRESIDENT CARTER: Aye.

25 Motion carries unanimously.

1 Thank you very much.

2 We'll close the hearing then on that permit.

3 And we will move to Item 9B. And we'll go ahead

4 and open the hearing to consider an application, No.

5 18413, to install chain-link fence and a gate at upstream

6 and downstream boundaries of property across the landside

7 slope, crown, and waterside slope of the left bank of the

8 levee of the Sacramento River in Sacramento County.

9 And, Mr. Yego, you're here to present on behalf
10 of the staff?

11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

12 Yes. Good morning, President Carter, Vice

13 President Butch Hodgkins, Board members. My name is John

14 Yego. I am the Chief of the Floodway Protection Section.

15 I'm here presenting to consider the Application

16 No. 18413 to install a 6-foot-high chain-link fence and

17 16-foot-wide gate at the upstream and downstream boundary

18 of the property located at 7260 Pocket Road.

19 The proposed fence and gate would cross the

20 landside slope, crown, and waterside slopes of the east,

21 or left, bank of the Sacramento River located in

22 Maintenance Area 9, a state -- or a Sacramento Maintenance

23 Yard maintenance area.

24 The application is by Mr. Donald Murphy.

25 Staff recommends denial of Application 18413 for

1 the following reasons:

2 The proposed cross fence and gate will interfere
3 with inspection, operation and maintenance and flood-fight
4 activities, and will contribute to the overall cumulative
5 effect on the access for these activities.

6 Under Title 23, Division 1, Chapter 1, Article 3,
7 paragraph 15, basis for denial of application items: Item
8 4 states that it will impair the inspection of floodways
9 or project works; Item 5, interfere with maintenance of
10 floodways or project works; and Item 6, interfere with the
11 abilities to engage in flood fighting, patrolling or other
12 flood emergency activities.

13 Also, staff expects, with the approval, this will
14 encourage other property owners along the levee to request
15 more permission to install cross fencing and gates to
16 retain their privacy.

17 There has been similar applications before the
18 Board, one as recent as June of 2004 by Sacramento City
19 Parks and Recreation, Permit No. 17844, in which the Board
20 denied the application.

21 If I may state why we're doing this hearing.
22 This application was originally submitted for
23 consideration as an addendum to Permit No. 17678, which is
24 for a boating dock, which was approved. Basically under
25 the previous standards prior to January 1, which requires

1 the evidentiary hearings and Board action, applications of
2 this type were normally denied by staff and returned to
3 the applicant.

4 This particular application is unique since that
5 under Title 23, Article 3, paragraph 7, which is the
6 endorsement of local maintaining agencies, properties
7 within state-maintained properties do not require local
8 maintaining endorsement. In these actions, the Floodway
9 Protection Section has acted on behalf of the state by
10 delegation of the State Maintenance Yards.

11 Based on this, a letter dated May 9th by Mr. --
12 or signed by Mr. Steve Dawson was sent to Mr. Murphy
13 recommending denial of Mr. Murphy's rights -- oh, his
14 rights to appeal. With that, a letter was received by Mr.
15 Murphy on May 22nd, 2008, which states that he wishes to
16 exercise his right of appeal. Mr. Murphy was contacted by
17 the Floodway Protection Section on June 25th of 2008 to
18 notify that his hearing was going to be scheduled for July
19 2008's Board meeting. Mr. Murphy then requested because
20 of scheduling conflicts that his hearing could be
21 postponed to September 2008.

22 During the August 15th, 2008, Board meeting with
23 the review of the future agenda for September 2008's
24 Central Valley Flood Protection Board meeting, under
25 Hearings and Decisions a Board member stated that staff

1 cannot deny an encroachment application, only that the
2 Central Valley Flood Protection Board can deny an
3 application. Upon direction from the Board, the Floodway
4 Protection Section proceeded to process the request as a
5 new encroachment application.

6 Based upon that, under the CEQA findings, items 3
7 and 4, the effects of the decision on the entire State
8 Plan of Flood Control: This project has negative effects
9 on the State Plan of Flood Control. And then Item 4,
10 effects of reasonable projected future events, including,
11 but not limited to, changes of hydraulic, climate, or
12 development within the applicable watershed: The proposed
13 project will add to the existing encroachments in this
14 reach of State Maintenance Area 9 that will interfere with
15 general inspections, maintenance of and any flood fight
16 along this reach of the levee.

17 Mr. Russ Eckman, Superintendent of the Sacramento
18 Maintenance Yard, is available for questions. And this
19 concludes my part of the presentation.

20 LEGAL COUNSEL CAHILL: Could I clarify with Mr.
21 Yego. It's not CEQA but it's Section 8610.5 of the Water
22 Code that sets out those points, is that right?

23 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:
24 That's correct.

25 BOARD MEMBER BROWN: Mr. Chairman, from a

1 procedural standpoint, I thought our staff could deny an
2 application or the permit, and then the applicant has the
3 right to appeal it to the Board, and then the Board has
4 the right to hear it or not. Is that incorrect, Ginny?

5 LEGAL COUNSEL CAHILL: That had been the prior
6 procedure. But we thought that -- since January 1st when
7 the new legislation took effect, it now says the Board
8 shall hold an evidentiary hearing for any matter that
9 requires the issuance of a permit. So we're interpreting
10 that to say it would be up to the Board whether to approve
11 or deny permit applications.

12 BOARD MEMBER RIE: Question?

13 PRESIDENT CARTER: Go ahead.

14 BOARD MEMBER RIE: You referenced several letters
15 from the applicant. None of those letters are attached to
16 the staff report. Do you have copies of those?

17 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

18 Yes, we do.

19 This is a copy of Mr. Murphy's response letter.

20 Would you like a copy of the letter sent by Mr.
21 Dawson acting for the --

22 BOARD MEMBER RIE: Well, since we're holding a
23 hearing on this issue and we're potentially considering
24 denying an application, I think we need to review the
25 evidence for the denial.

1 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

2 This is a copy of the letter that was sent by Mr.
3 Dawson acting for the Chief of the Floodway Protection
4 Section in response to Mr. Murphy's application.

5 BOARD MEMBER RIE: Is there any other
6 correspondence?

7 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: Not
8 written correspondence. After this, most of the
9 correspondence was verbaled over the phone.

10 BOARD MEMBER SUAREZ: Mr. President, I have a
11 question.

12 PRESIDENT CARTER: Go ahead.

13 BOARD MEMBER SUAREZ: I was wondering if somebody
14 could add information regarding, how does this particular
15 fence or barrier interfere with or preclude legal public
16 access on the levee? In other words, has he agreed to
17 provide us with a key to the gate that we can have access,
18 or has anybody asked him?

19 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

20 That would be a requirement for flood fighting.
21 And that access is required through the gates for all the
22 entities that would be involved. So the applicant would
23 have to provide keys to the State Maintenance Yards for MA
24 9.

25 BOARD MEMBER SUAREZ: Was he asked to provide

1 those keys?

2 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: He
3 was not asked.

4 BOARD MEMBER SUAREZ: So we don't know whether
5 he'd be willing to provide 24/360 -- all-time access for
6 us to do the work we need to do?

7 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
8 That's correct.

9 BOARD MEMBER SUAREZ: Thank you.

10 BOARD MEMBER BROWN: I have a question, Mr.
11 Chairman.

12 PRESIDENT CARTER: Mr. Brown.

13 BOARD MEMBER BROWN: Why does the applicant want
14 to fence this off, number one? And then, two, if he wants
15 to fence it off for protection of the property for
16 whatever, why couldn't he put in a fence parallel on the
17 landward side of the embankment?

18 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
19 Under Title 23, the parallel fence is not allowed with the
20 exception basically from -- or permission from the local
21 maintaining agency, and that it be below four feet in
22 height and that it be -- basically you can see through it,
23 basically a chain-link fence or a wrought-iron fence.

24 BOARD MEMBER BROWN: Well, it would seem like a
25 parallel fence to the levee on the landside would be a lot

1 less obtrusive than the one perpendicular to the river
2 itself on the wet side of the levee.

3 What's he want the fence for to begin with?

4 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: I
5 don't know. I think Mr. Murphy -- is he -- he's
6 actually -- Mr. Murphy is here in the audience.

7 PRESIDENT CARTER: Okay. Well, we're going to
8 hold that for right now.

9 My understanding, Mr. Yego, is that if there is a
10 fence across the levee, there is a DWR lock on that fence,
11 and that's the provision in terms of supplying keys or
12 access, we have our own lock that we put on that, is that
13 correct?

14 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
15 Generally, yes, that is correct.

16 PRESIDENT CARTER: Okay. The other question I
17 have is, what is legal public access in this area? I know
18 that -- I know that in the Pocket Area it's customary for
19 people to walk the levees and what not, also along the
20 American River as well. But I mean what is legal public
21 access? The public access I know is restricted --
22 strictly restricted further up in the Sacramento system.
23 But I don't know what it is in the Pocket Area.

24 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: In
25 the previous application that I stated that was in June

1 2004, the public access was actually for the bike trail.

2 So basically on the crown of the levee, that was the
3 public access.

4 This particular area has several points of public
5 access. There's no private property that prevents the
6 public from accessing it directly from city streets. And
7 there's actually a vacant property that is nearby that
8 people can have access to the Sacramento River system.

9 PRESIDENT CARTER: Are there other fences and
10 gates that go across the levee in this area?

11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: If
12 I can defer that to Mr. Russ Eckman, he could answer that
13 more properly.

14 PRESIDENT CARTER: Okay.

15 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

16 Mr. President, members of the Board. I'm Russ
17 Eckman. I'm Maintenance Superintendent for the Sacramento
18 Maintenance Yard. And Maintenance Area 9's one of the
19 projects that we do maintain.

20 There are several gates that do cross the levees
21 and cross the crowns. Actually there's 14 gates, some
22 private, some maintained by us, there's 14 of them within
23 the first six miles at Maintenance Area 9. So there's a
24 significant amount of gates already up there.

25 Near this property there's actually a gate about

1 a tenth of a mile downstream of the property, and there's
2 also another gate restricting access about three-tenths of
3 a mile upstream of his property. And he's now looking to
4 try to put two more gates within a half mile there to
5 tighten it up. But there are several gates and even some
6 right close to his property but not necessarily protecting
7 his property.

8 And then the issue on the locks, it is a
9 standard. Our yard will have a lock on all gates so we
10 have access to get through it at any time.

11 PRESIDENT CARTER: Okay. Ms. Suarez.

12 BOARD MEMBER SUAREZ: Well, then, you know, I
13 would ask again, on what basis did Mr. Dawson write that
14 sentence? What is the evidence that we can look at and
15 rely on to make a decision to support that sentence, I
16 mean to make the point? Because it's, is that correct,
17 the sole reason why he denies?

18 SECRETARY DOHERTY: Perhaps the laws have
19 changed.

20 How long ago were those previous gates put up?

21 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

22 Exactly when they were established, I don't know.
23 I've been with the Department for ten years and those
24 gates have been up for at least ten years.

25 BOARD MEMBER SUAREZ: So then my only point is

1 that he sites specifically that this would interfere as a
2 reason. But he never explains why. And the more we talk,
3 the least amount of interference I see. So I like --

4 PRESIDENT CARTER: Perhaps you can speak to why
5 this interferes with your ability to maintain the Levee
6 and Maintenance Area 9.

7 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
8 The more gates and obstructions we have, the
9 harder it makes us do our mowing, controlling vegetation.
10 There's a little more at each gate's location, a little
11 more spring, a little more work that needs to be done in
12 these areas to keep them maintained. Some of these older
13 fences have been up for a while. The original people that
14 applied for the encroachments don't necessarily maintain
15 their gates after a few years. So it brings a little more
16 burden on to our department to keep these things
17 maintained. And just a matter of access trying to get all
18 the gates open, get in and do our work and close up at the
19 end of the day does take time. And there's already a
20 significant amount of gates up on there that already are
21 established that do impact our work.

22 PRESIDENT CARTER: Has this area, the Pocket Area
23 been cited as part of the inspection process as one of
24 those noncompliant areas under the Corps guidelines and
25 are they considering discontinuing PL 84-99 assistance as

1 a result of that?

2 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

3 Most of Maintenance Area 9 has a lot of
4 landscaping encroachments on there that do not meet
5 current standards. We are in the process of working with
6 some of the homeowners to remove some of this vegetation
7 and also limiting up the trees so we do pass. But that
8 issue's still kind of vague on just where we're going to
9 draw the lines on how much vegetation or other
10 encroachments are allowed.

11 PRESIDENT CARTER: Okay. Any other questions of
12 staff?

13 BOARD MEMBER RIE: Yes. Maybe this is a question
14 for legal counsel.

15 What does Title 23 say with regards to gates
16 perpendicular to the levee? If you want to come back to
17 that in a little while, that'd be fine.

18 PRESIDENT CARTER: Okay. Any other questions?

19 Mr. Hodgkins.

20 VICE-PRESIDENT HODGKINS: I'd like to ask Gary,
21 if he would, to speak to the implications of this kind of
22 a fence in light of the challenges we're facing in San
23 Joaquin County along Bear Creek and the Stanislaus. Isn't
24 this similar to some of the encroachments there that the
25 Corps has said must be removed to meet maintenance

1 requirements, or is it not?

2 CHIEF ENGINEER HESTER: The situation in the Bear
3 Creek/Calaveras River situation is a little bit more
4 complicated in terms of what is out there in terms of
5 encroachments, fences included. We're part of the project
6 when it was constructed, and it's reflected in the
7 easement deed. So the property owners, whether they can
8 have that fence or not, is really, you know, a
9 determination of that history of, you know, how the
10 project was constructed with that fence or encroachment in
11 place.

12 This situation is a little bit different. But
13 back to what the Corps is expecting in terms of moving
14 forward, maintaining agencies dealing with encroachment
15 issues, this is an example of one that if the
16 determination of the local maintaining agency is that it
17 impedes the ability to flood fight, and this -- certainly
18 during high water in adverse conditions wrestling with
19 another set of gates in order to make your patrols is one
20 of the considerations, then the determination could be
21 made that this is not an acceptable encroachment.

22 VICE-PRESIDENT HODGKINS: Gary, do you know, has
23 the Corps done the kind of inspection that resulted in the
24 identification of problems in San Joaquin on this
25 particular piece of the levee?

1 CHIEF ENGINEER HESTER: I am sure they have. How
2 recently, I don't know. What I understand is that the
3 Corps does a rotating five-year inspection. So they try
4 to cover 5 percent of their area -- or 20 percent of their
5 area every year. And so I would think in the last five
6 years it's been inspected by the Corps.

7 PRESIDENT CARTER: Any other questions of staff?

8 LEGAL COUNSEL CAHILL: Actually could I ask, has
9 the local maintenance area taken a position or sent a
10 letter with regard to this application?

11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

12 Yes, Russ has submitted a letter.

13 LEGAL COUNSEL CAHILL: And could copies of that
14 be made for the Board and entered into the record?

15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

16 Yes.

17 LEGAL COUNSEL CAHILL: Ms. Rie, would you like me
18 to respond now to your question?

19 BOARD MEMBER RIE: Sure.

20 LEGAL COUNSEL CAHILL: Title 23, Section 126,
21 fences and gates. Section A5 says, "Where the distance
22 between fences would be so close as to interfering
23 reasonably with levee inspection, maintenance and flood
24 fight activities, the Board may deny approval for
25 additional fences."

1 PRESIDENT CARTER: In the staff report it
2 mentions under "Agency Comments and Endorsements" that the
3 Sacramento Maintenance Yard does not endorse the
4 application. And you've mentioned that the maintenance
5 yard -- Mr. Eckman has sent a letter to Board staff to
6 that effect. It also states that the U.S. Army Corps of
7 Engineers has not endorsed this project. Does that mean
8 that they have sent a letter or we just haven't heard from
9 them?

10 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: We
11 haven't even submitted it to the Corps for --

12 PRESIDENT CARTER: Okay. So they're silent on
13 this? It's not that they haven't endorsed it; they're
14 silent --

15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

16 Yes, they're silent on it.

17 BOARD MEMBER RIE: Well, how can they speak?

18 PRESIDENT CARTER: Okay.

19 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: And
20 basically -- if I could add, that basically it's in
21 inclement conditions it makes it very difficult for the
22 flood fighters to access wherever areas they have to be
23 during an emergency. And with gates and fences, it makes
24 it difficult for them to attempt to do their flood
25 fighting.

1 PRESIDENT CARTER: Okay. Any other questions of
2 staff?

3 BOARD MEMBER RIE: One more question.

4 BOARD MEMBER SUAREZ: Yes, I have --

5 BOARD MEMBER RIE: Go ahead.

6 BOARD MEMBER SUAREZ: I actually want to take
7 this opportunity to perhaps express to the staff -- and
8 Mr. Dawson, I guess he's not here.

9 If I'm the applicant and I receive this letter
10 and all I get is that one line and nobody has taken the
11 time to explain to me what that line means, I would be
12 wondering what type of arbitrary and capricious process
13 this Board engages in.

14 Now, you all have articulated very good reasons
15 perhaps for us to consider denying. Counsel has even
16 identified yet another reason why we might consider
17 denying this. But the poor gentleman who provided the
18 application has no way of knowing that. He has no way of
19 being prepared now to rebut appropriately these things.
20 It doesn't do the public that we serve a service when they
21 get -- and I think it's the type of thing that -- it's the
22 reason why the public is fed up with the way government
23 works and doesn't work for them, for this -- precisely
24 this kind -- this might not be -- it might seem like a
25 small thing to us, but I'm sure it's a big deal to this

1 gentleman. And he is entitled to an explanation besides
2 just a code section arbitrary decision or what appears to
3 be at least an arbitrary decision. Please consider that
4 in the future, especially when you're denying something or
5 you're recommending a denial on applications. To me it's
6 just very disturbing that the reasons that have been
7 articulated for denying, the more we look into them,
8 perhaps are not that solid.

9 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

10 Okay. In past history, basically as a
11 requirement of the application is that we get -- receive
12 local endorsement. But because this a state-maintained
13 area, the Floodway Protection Section acts on behalf of
14 the local maintainer. Prior to this they would
15 normally -- an applicant would normally have to bring this
16 before the local maintainer to receive their endorsements
17 of the project. This does not preclude them from trying
18 to apply from it, but they have not received endorsement
19 from the local sponsor.

20 BOARD MEMBER SUAREZ: And based on your answer,
21 I'm not sure you heard what I just said.

22 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO: No,
23 I understand --

24 EXECUTIVE OFFICER PUNIA: I think the point's
25 well taken. We will revise our letters to explain what

1 the logic for denying the application is. We will
2 definitely revise our letters.

3 BOARD MEMBER BROWN: Mr. Chairman, Emma brings up
4 a very correct point. And we base our hearing decisions
5 upon the Rules of Evidence. So far I've heard no evidence
6 that would support a decision one way or the other.

7 PRESIDENT CARTER: Okay. I might disagree, but
8 that's -- reasonable parties can disagree.

9 I think what we ought to do is --

10 BOARD MEMBER RIE: Can I ask another technical --

11 PRESIDENT CARTER: Yes, you can, and then we'll
12 move on to gathering more evidence.

13 Go ahead.

14 BOARD MEMBER RIE: What is an acceptable distance
15 between gates on a levee for flood fighting purposes?
16 Title 23 allows it. So what is an acceptable distance in
17 order for us to maintain the levees?

18 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN: I
19 don't think there's any standard saying 100 feet, 1,000
20 feet or whatever. I don't -- I've never seen anything
21 like that in the code. It's just a matter of -- some of
22 these properties out there we've had the applications for
23 and it would put a gate almost every 100 feet. And that
24 is definitely a major impact on our work. This property's
25 a little bit large, so there's a little more space. But I

1 did mention there was a gate already just a little bit
2 downstream and then one a little further upstream.

3 BOARD MEMBER RIE: Okay. What is the distance
4 from the proposed gate to the next gate that's on the
5 levee?

6 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
7 Downstream is roughly a tenth of a mile, and then
8 from the upstream gate it'd be about three-tenths of a
9 mile.

10 BOARD MEMBER RIE: So 3 or 400 feet between
11 gates?

12 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
13 There should be 500 feet downstream, and there'd
14 be roughly 1800 feet or so upstream where the next gates
15 are that are already existing.

16 BOARD MEMBER RIE: And it seems to me that 500
17 feet, 1800 feet, that seems like a reasonable distance for
18 flood fighting purposes.

19 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN: It
20 does delay our actions to get out there to stop and open
21 up all these gates and get our patrols out there. And if
22 we did have an emergency, trying to get emergency
23 equipment out deal with the situation out there, the more
24 gates we have it just delays our action of getting out
25 there and getting something accomplished.

1 BOARD MEMBER RIE: How much of a delay?

2 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

3 Well, you figure each gate it will be probably no
4 more than about a minute or two per gate you're getting it
5 open, swinging it open, and then drive down to the next
6 gate. But when you start getting a whole series of gates,
7 it does start -- and sometimes the faster we can react to
8 boils or whatever could mean we save the levee or we
9 don't. So it's just a matter of time. And who knows how
10 much time you have. But the sooner we can get there, the
11 better off we all are.

12 PRESIDENT CARTER: Does staff wish to add
13 anything?

14 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

15 Also, these gates especially on the waterward
16 side being down there, they do catch debris; they do
17 deflect the water, which could convert the water into the
18 levee, cause more erosion. Sometimes these gates do break
19 away. And then they get hung up on trees or other debris
20 downstream and cause other potential erosion issues.

21 And then like I mentioned too, our maintenance,
22 it's harder to get our equipment in there to mow around
23 these gates. We typically do use a large piece of
24 equipment. But around these gates sometimes we'll have to
25 put people down with weed eaters and do a lot of this work

1 by hand, where normally we could do it by machinery.

2 PRESIDENT CARTER: Okay. Any other questions of
3 staff?

4 We'll move on. We'll open up to public
5 testimony.

6 Would the applicant wish to address the Board?

7 MR. MURPHY: Good morning. And thank you for
8 giving me this opportunity.

9 You, like me, heard a bunch of information this
10 morning, and I --

11 PRESIDENT CARTER: I'm sorry. But, Mr. Murphy,
12 would you please just introduce yourself for the record.

13 MR. MURPHY: Oh, I'm sorry. Donald Murphy and I
14 live at 7260 Pocket Road.

15 PRESIDENT CARTER: Thank you.

16 MR. MURPHY: You, as I, have heard a bunch of
17 information this morning that I was unaware of. The
18 letter that you saw that I received was very arbitrary,
19 and I was quite surprised. And so when I filed my appeal
20 I realized that when I first submitted my application,
21 that I was a naive property owner. I assumed that since I
22 own the property, I pay taxes on my property on the levee,
23 that putting up a fence seemed to be within my rights.
24 Since that time and since the rejection of my appeal, I've
25 done a reasonable amount of work to prepare for the next

1 phase.

2 In doing so, what I'd like to suggest today is
3 not a decision, but if I could get some direction from the
4 Board and the staff on how I could work with these people
5 to arrive at a solution that works for everybody.

6 I submitted four copies of my application
7 originally. I sense that those wound up in the garbage
8 can. Because when I filed my appeal, I was asked to
9 resubmit my application. The fact that you haven't seen
10 that, my cover letter, the reasons for the request, that's
11 a surprise to me.

12 A couple of other things I've learned recently is
13 there has been the approval of some new gates in the
14 immediate area. If you're familiar with the La Revaj
15 Hotel, the former Captain's Table, for those of you are
16 familiar with Old Sacramento or the older Sacramento
17 neighborhoods, they have a new gate/fence across the levee
18 top.

19 In the July meeting here there was an approval
20 made in San Joaquin County, I believe. I have the number
21 for that, but -- Application 18347.

22 There's also an organization called the
23 Sacramento Riverfront Association that filed a lawsuit
24 against the Department of Water Resources in 1999, I
25 believe. And I have a copy of the hydraulic report that

1 was prepared. And the matter was settled out of court.

2 But the fact remains that that study and that survey
3 showed that these types of fences and gates do not
4 necessarily create a negative effect on the river flow.

5 So, that's why I'm saying that if I was given the
6 opportunity to get some direction from the Board and from
7 the staff, I'm prepared to do what it takes to arrive at a
8 solution with everybody.

9 The maintenance issues and the fact that they
10 have to drive their trucks, I'm quite aware of that.
11 During the heavy rain seasons they drive up and down the
12 levee all night, so I can hear them. But I'm prepared to
13 leave the gates open during heavy times of the year when
14 they need access.

15 As far as cutting the lawn, their blades go about
16 20 feet down. And there's still a lot of growth that
17 occurs there on the levee sides, which I maintain myself.

18 So, I'm prepared to do what it takes to work
19 together.

20 My primary reason for submitting the application
21 was my concern for security. The access to my property
22 from the levee and from the river causes me to be
23 concerned because of -- the Pocket Area has had a lot of
24 vandalism, home invasions. I have vandalism -- I had the
25 approval for my dock, which has now been installed for

1 about two years. And since that time, I've got people
2 that are trespassing on my dock, I have problems with
3 people -- neighbors with their dogs fence-fighting my
4 dogs, things like that. So there was a number of things
5 that I stated in my application.

6 Somehow I can't believe that somebody having an
7 unlocked gate is more important than my security. So I
8 was offended by the fact that the maintenance crew has to
9 spend another couple of minutes opening the gate.

10 So, again, I'd like some direction from the
11 Board, work with the staff on what it would take to reach
12 an amicable solution.

13 BOARD MEMBER RIE: Can I ask a question?

14 PRESIDENT CARTER: Absolutely.

15 BOARD MEMBER RIE: We only received a copy of
16 your May 22nd letter. Were there other letters and other
17 information you submitted to --

18 MR. MURPHY: Was that my application?

19 BOARD MEMBER RIE: No, it's just a one paragraph
20 letter.

21 MR. MURPHY: Oh, okay. That was requesting the
22 appeal.

23 BOARD MEMBER RIE: Is that the only thing you've
24 submitted?

25 MR. MURPHY: No, I -- are you familiar with the

1 application process?

2 BOARD MEMBER RIE: Yes, we are. We don't have a
3 copy of your application.

4 MR. MURPHY: Which was a surprise to me.

5 I submitted four copies of that back in May, I
6 believe. And then I was asked to resubmit it, because I
7 sense that it wasn't on file. It wasn't on file because I
8 had to resubmit it. And I did that at their -- when I
9 filed my appeal, they asked me to resubmit the
10 application.

11 PRESIDENT CARTER: What we do have I think from
12 your application is a hand-drawn schematic of the levee
13 cross-section with the gates going across, dated May 6th
14 from you. And it says it's page 8 of 8. But we don't
15 have the other seven pages.

16 MR. MURPHY: Oh, okay. I apologize for the
17 hand-drawn nature of my --

18 PRESIDENT CARTER: There's no problem with that.

19 MR. MURPHY: Okay. And I have since submitted
20 another drawing from a fence company that I had put a bid
21 on what it would cost to build the fence.

22 SECRETARY DOHERTY: They did state that you
23 wanted fences to restrict access to your private property.
24 They did tell us that.

25 MR. MURPHY: Okay.

1 SECRETARY DOHERTY: And you were concerned about
2 general personal safety as a result of accessibility to
3 your property. So they did tell us what you had
4 requested.

5 MR. MURPHY: All right. That's fine.

6 For those of you that aren't familiar with that
7 stretch of the Pocket Area, my property is fairly unique
8 in that -- you may know that around the turn of the 20th
9 Century there was a lot of Portuguese families that had
10 farms down there. In the 1970s most of that land was
11 developed and, as such, the developers relinquished the
12 rights to the levee. But my property, along with some
13 others, is unique in that we still own across the levee
14 top to the high watermark. So that's a real advantage for
15 me of course to be a property owner. And we have always
16 allowed people to walk on our property. It's gotten to
17 the point now though where I need to provide restricted
18 access.

19 PRESIDENT CARTER: So these gates -- you
20 mentioned trespassing on the dock. These are not going --
21 these fences are not going to do anything with regard to
22 waterside access?

23 MR. MURPHY: That's correct.

24 PRESIDENT CARTER: It's only landside access?

25 MR. MURPHY: Yeah. But --

1 PRESIDENT CARTER: Basically access from the
2 levee top?

3 MR. MURPHY: Yes. And right now I have a
4 liability issue with respect to -- I mean there's kids,
5 there's dogs, there's people walking up there that are
6 going down my gangplank. And if somebody falls and gets
7 hurt, I guess I'm responsible because they're on my
8 private property. And I of course have insurance to cover
9 that. But at the same time, it is my private property.

10 SECRETARY DOHERTY: Mr. Chairman, I believe he
11 says and the waterside slope of the left bank levee.

12 So you are projecting your fence down into the
13 water, correct?

14 MR. MURPHY: No, that's -- no, ma'am. It's
15 actually -- I drew it up to where it would only go to the
16 high watermark, which is my property line. And that's
17 denoted by I think in '97 or '98 to put a slurry wall in
18 that stretch of the levee. And there's large rocks that
19 fortify the levee on the bank side of the river there.

20 PRESIDENT CARTER: Okay. Any other questions of
21 the applicant?

22 BOARD MEMBER BROWN: What would keep vandals from
23 going around the fence?

24 MR. MURPHY: Well, you know as well as I do, if
25 somebody wants to get somewhere, they probably would.

1 BOARD MEMBER BROWN: Would there be room for them
2 just to walk around without getting wet as a for
3 instance --

4 MR. MURPHY: They could do it without getting
5 wet. It would deter the casual person from wanting to do
6 that because it's somewhat dangerous. It's sloped, it's
7 rocky. But you really could not prevent it if somebody
8 wanted to get in there.

9 BOARD MEMBER RIE: Question?

10 PRESIDENT CARTER: Go ahead.

11 BOARD MEMBER RIE: How far are there nearest
12 gates? And do you agree that they're about 500, 1800
13 feet --

14 MR. MURPHY: Yeah, Mr. Eckman's assessment was
15 pretty accurate. My neighbor to the south, the Da Rosa
16 family is their name, they've been there for many years.
17 They have an old gate that crosses all the way down --
18 there's a flat area there before the water. So their gate
19 goes quite a ways down.

20 To the north the gate is actually I think a gate
21 that's from the maintenance department. It's not a
22 private property gate. And that is about -- what'd he
23 say? -- three-tenths of a mile or 1800 feet. That's
24 probably pretty close.

25 BOARD MEMBER BROWN: With the existing gates,

1 does that provide any protection for you from vandals?

2 MR. MURPHY: No.

3 BOARD MEMBER BROWN: There's access -- easy
4 access to the levees around the existing fences then?

5 MR. MURPHY: There is a -- there's some vacant
6 lots, they're really not buildable parcels, just to the
7 north of me. There's a street called Port Now Circle.
8 And at the end of that street - it's a horseshoe - there's
9 supposedly no parking there. But a lot of people will
10 come up and they can access the levee from there.

11 To the south of me at the end of Marina Parkway,
12 there's another kind of vacant lot area where people can
13 access the levee. In effect, in terms of restricting
14 access for pedestrians and whoever else goes up there, I'm
15 not cutting off that much of the levee to the public
16 that's using it, because of the neighbor to the south that
17 has a gate that's 500 feet down.

18 BOARD MEMBER BROWN: Okay.

19 PRESIDENT CARTER: Any other questions of the
20 applicant?

21 VICE-PRESIDENT HODGKINS: For purposes of the
22 security of your home, is there any room in your backyard
23 to put a cross fence that at least would stop people from
24 getting ready access? It would have to be out at least
25 ten feet from the toe of the levee. I'm just not familiar

1 with your lot.

2 MR. MURPHY: Okay. I already have that fence.
3 There is a Cyclone fence that runs ten feet from the levee
4 toe the entire length of my property. There's actually
5 two parcels on my property -- two separate parcels, but I
6 own them both. And that chain-link fence runs the entire
7 length of the west end of the property right off the
8 levee.

9 SECRETARY DOHERTY: So do you have then gates on
10 that levee?

11 MR. MURPHY: Yes, I have two walk gates --
12 walkthrough gates which I keep chained and locked at all
13 times. But, yes, I have levee access from there.

14 PRESIDENT CARTER: But those are outside the
15 levee easement on the landward side of the levee --

16 MR. MURPHY: Yes, that's correct.

17 PRESIDENT CARTER: -- at the base -- beyond the
18 toe of the levee?

19 MR. MURPHY: Right.

20 BOARD MEMBER BROWN: But that gives you
21 protection from a home invasion. What you're concerned
22 with now in addition to that is the dock and your boat
23 down there?

24 MR. MURPHY: That's correct. And also there's
25 been instances with kids riding motor vehicles up there --

1 motor bikes dirt bikes. There's even a guy around there
2 with a golf cart. There's -- I have some dogs. And
3 people walk their dogs off leash and they'll come down and
4 fence fight with my dogs, things like that. I mean I --
5 that's an irritant I guess more than a danger. But
6 nonetheless it's an invasion of my privacy.

7 PRESIDENT CARTER: Any other questions of the
8 applicant?

9 BOARD MEMBER RIE: One more.

10 Would you be okay with one gate rather than two?

11 MR. MURPHY: If that was a condition of getting
12 the permit approval, yes.

13 BOARD MEMBER RIE: Okay.

14 MR. MURPHY: I don't if that would satisfy my
15 real concerns though, but I would certainly consider
16 compromising. I'm trying to be reasonable about this.
17 And at the same time since I don't know the actual
18 processes what I have to go through, I'm prepared to be
19 open minded about everything.

20 PRESIDENT CARTER: Okay. Any other questions of
21 the applicant?

22 Thank you very much, Mr. Murphy.

23 MR. MURPHY: Thank you.

24 PRESIDENT CARTER: Are there any persons in the
25 public that wish to speak in support of the application?

1 Are there any other persons that wish to speak in
2 opposition of the application?

3 Okay. Hearing none.

4 Board staff, do you wish to comment on the
5 applicant's testimony?

6 SENIOR ENGINEER BUTLER: I would.

7 PRESIDENT CARTER: Mr. Butler.

8 SENIOR ENGINEER BUTLER: Eric Butler, Board
9 staff.

10 Just to clarify a point that the applicant made.
11 He referenced -- and please correct me if I'm wrong -- a
12 permit, 18347, that he claimed we approved in July. And
13 just to clarify that, that was brought to you in July, it
14 was deferred. You have not yet heard it. It's one we'll
15 probably bring up in a month or two. But in reading the
16 staff report from July, there was a perpendicular wooden
17 fence on the landside slope and a longitudinal, or
18 parallel, fence at the landside levee crown. So my
19 understanding of that application is different. It is not
20 fences going over and across the levee crown. So I wanted
21 to clarify that.

22 Furthermore, since we're offering testimony,
23 during my time as leading the Flood Operations Center
24 through several of the major floods, '95, '97, '98, which
25 Jay can further attest to, we rely heavily on our levee

1 maintaining agencies patrolling our levees. And we have
2 required these agencies at times to make up to hourly
3 patrols 24 hours a day. And I would strongly encourage
4 you to consider that any time you put another fence up
5 across our levee systems, as you -- the more fences we
6 allow, the more delay and inconvenience we make to our
7 flood fight agencies to safely patrol these levees. And
8 many times, as Mr. Eckman pointed out, we have found boils
9 that we believe had they been able to continue to flow for
10 even another hour we may have lost those levees. So from
11 my personal experience, I would highly recommend the Board
12 to strongly consider denial of this application and others
13 in the future for cross fences.

14 Thank you.

15 PRESIDENT CARTER: Ms. Suarez.

16 BOARD MEMBER SUAREZ: Yeah, a quick question, Mr.
17 Butler.

18 You mentioned that the application that we're
19 going to see in the future is different, the fence is
20 different.

21 SENIOR ENGINEER BUTLER: In my reading of the
22 staff report that we prepared for you in July, which then
23 we pulled, it is not fences that completely cross the
24 levee.

25 BOARD MEMBER SUAREZ: And why is that distinction

1 important?

2 SENIOR ENGINEER BUTLER: Because that particular
3 fence would not prohibit -- would not inhibit ease of
4 access for flood fight activities and for maintenance.

5 BOARD MEMBER SUAREZ: So it's an access issue,
6 it's not an integrity of the levee issue?

7 SENIOR ENGINEER BUTLER: That's correct.

8 PRESIDENT CARTER: Any other comments from staff?
9 Question?

10 VICE-PRESIDENT HODGKINS: Could I ask a question
11 of the maintenance folks?

12 There are -- I cannot tell from this where this
13 is. But there are areas down here where the seepage is
14 really bad. And I know SAFCA went in somewhere close to
15 this I think and did some deep slurry wall. Is this an
16 area where the landside seepage is bad?

17 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

18 Actually, the worst seepage area was in the
19 Surfside Street. And that's probably a half mile north of
20 this property is where we had the worst seepage and where
21 that new seepage wall was placed. But we do have seepage
22 issues all through that area.

23 VICE-PRESIDENT HODGKINS: Thank you.

24 PRESIDENT CARTER: Mr. Punia.

25 EXECUTIVE OFFICER PUNIA: I think our Board

1 President already mentioned but I want to explain it a
2 little more. When we had a meeting with the Corps, they
3 pointed out that we are superimposing too many things on
4 the flood control project. And any time if we superimpose
5 additional things, it takes a little bit off our response
6 time and it decreases our flood protection for that area.
7 So this type of fence will definitely impact our
8 capability for operation and maintenance and capability
9 for a flood fight.

10 Thank you.

11 PRESIDENT CARTER: Okay. Mr. Swanson, did you
12 want to address the Board?

13 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

14 Yeah, if I could.

15 Keith Swanson, Chief of the Flood Maintenance
16 Office. I just wanted to reiterate two points.

17 One is there is a maintenance impact. You asked
18 about the standards, you know. No, we don't have
19 standards on when gates can be there. But every time you
20 add a gate, that increases our maintenance obligations, it
21 makes it more difficult.

22 Normally we'd be running -- you know, we now have
23 EB mowers, slope mowers, we run them down the slopes.
24 Every time there's a gate that's one other thing you've
25 got to work around. It's hand labor, slows us down.

1 The other point is during a flood emergency, we
2 keep the gates open. And so it's not opening and shutting
3 the gates. But you do have the gate going down the
4 waterside slope out into the -- you know, out into the
5 channel, toward the channel. Vegetation, debris does pile
6 up against those gates. Those gates can -- you know, the
7 fences can break free and then you've got something going
8 down. And so there's potential for increased erosion.

9 I know, you know, you can argue anything you
10 want. But the reality of it is, those things do trap
11 debris. When you have trapped debris you get localized
12 higher velocities, which can cause problems.
13 Specifically, will it? You know, I can't say specifically
14 there. But it's just another problem that we have to deal
15 with.

16 And then the overall problems with encroachments
17 are huge and we're going to be dealing with that. And
18 we're going to be coming in front of you on a regular
19 basis as we try to come to grips with encroachments that
20 were allowed, encroachments that were allowed but then
21 haven't been maintained, encroachments that were allowed
22 but then they were augmented with other encroachments.
23 This is a huge issue.

24 Now, I understand that the applicant has, you
25 know, a safety concern. And I know he'd like to preclude

1 access. It is a problem though when you live on a levee,
2 because those do attract people. And there's lots of
3 people that are up there walking. And they're going to go
4 around his fence, through his fence, over his fence. You
5 know, every time you put one of those gates up, we're
6 dealing with people that are, you know, up north driving
7 through them. I mean they're tough to maintain and keep
8 people out. People are going to access our levees.

9 So thank you.

10 PRESIDENT CARTER: Thank you.

11 BOARD MEMBER RIE: Question?

12 PRESIDENT CARTER: Go ahead.

13 BOARD MEMBER RIE: Does this particular proposed
14 gate go down to the waterside of the levee?

15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: It
16 doesn't go down. It goes across the crown of the levee.

17 BOARD MEMBER RIE: How far?

18 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: But
19 when it opens -- it's a 15 foot or 16 foot.

20 BOARD MEMBER RIE: Does it stop at the crown?

21 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

22 It's basically on the shoulders. And so when you
23 open it up it will be -- and I don't know the exact
24 details of which way --

25 BOARD MEMBER RIE: Does it go down the waterside

1 slope?

2 EXECUTIVE OFFICER PUNIA: The gate doesn't. But
3 the fence goes -- if it's shown on the sketch.

4 BOARD MEMBER BROWN: You said gate. You meant
5 fence, didn't you, Teri?

6 EXECUTIVE OFFICER PUNIA: The fence goes to the
7 high water level.

8 PRESIDENT CARTER: On the waterside slope.

9 EXECUTIVE OFFICER PUNIA: On the waterside, yes,
10 slope.

11 PRESIDENT CARTER: So it basically crosses the
12 levee from the landward toe across the crown down to the
13 high watermark on the waterside.

14 BOARD MEMBER RIE: So the fence stops at the high
15 watermark?

16 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
17 That is correct.

18 BOARD MEMBER RIE: So if the fence stops at the
19 high watermark, are we still concerned about debris
20 getting caught on that fence?

21 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

22 Yes, we are, because you can have floating debris
23 caught on the fence. Your driftwoods.

24 BOARD MEMBER RIE: Does the applicant want to
25 come back up?

1 MR. MURPHY: Thank you.

2 Well, I don't have direct experience on that.
3 But it wouldn't seem likely that there's going to be
4 debris gathering that close to the top of the levee. And
5 those gates are on the very top of the levee. There's
6 room off the shoulder, so it's not all the way. It's a
7 proposed 16-foot-wide gate. And I asked the fence company
8 to build it that way so there was more than sufficient
9 room for two large vehicles to pass if that needed to be
10 the case.

11 BOARD MEMBER RIE: Okay.

12 MR. MURPHY: I might also like to add regarding
13 the previous comment about, "Gee, you know, we allow this
14 gate and other people are going to be wanting to build
15 gates there," I'll stress again that my property is unique
16 in that it wasn't part of the development process of the
17 Pocket Area where the land was -- the levee land was
18 relinquished when the developers built it. There really
19 are no people to the south of me that have a similar type
20 of property that could put up a gate because they don't
21 own the levee.

22 To the north of me there is one property about
23 500 feet north. They don't have a gate. It's unlikely
24 that they would gate it. But outside of that, you'd have
25 to go quite a ways up the levee before you have any

1 private property.

2 BOARD MEMBER RIE: Okay.

3 PRESIDENT CARTER: Thank you.

4 SECRETARY DOHERTY: Mr. Chairman, I have one more
5 question.

6 PRESIDENT CARTER: Go ahead.

7 SECRETARY DOHERTY: Mr. Swanson, in this flood
8 operation that you're in charge of, are you going to be
9 checking on the other gates and fences up and down that
10 levee to see if they were put there with a permit? And,
11 like he says, Le Rivage. And as you're doing down on the
12 Bear, are you going to cause people to replace? Or what's
13 the situation?

14 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

15 Well, I'm not involved with anything on the Bear.
16 But the encroachment issue is an issue that my group is
17 going to have to be dealing with in a much more aggressive
18 manner. Because it's something that as a department we
19 haven't ever really addressed adequately. The Board has
20 wrestled with this and it hasn't addressed it adequately
21 either. And so encroachments are going to be a huge issue
22 as we move forward.

23 And we will have to be looking at, you know,
24 encroachment by encroachment. And we're going to have to
25 be working with property owner after property owner after

1 property owner, because it's pretty obvious that the Corps
2 of Engineers is changing the expectations. And I think
3 collectively we have all come to the conclusion that we
4 need to do a better job of maintaining our flood control
5 system. And encroachments are one of those aspects that
6 we have not done a good job in the past, and so we will in
7 the future. And we've already started.

8 PRESIDENT CARTER: Any other questions?

9 Okay. I'm going to close the public testimony
10 portion of the hearing.

11 And Board members can make comments, motions,
12 discussion.

13 I can start this off maybe. I appreciate the
14 applicant Mr. Murphy's concerns about security. I don't
15 fully understand how the cross fence on the levee is going
16 to improve security other than limiting access to the top
17 of the levee crown perhaps or some of the access to the
18 top of the levee crown for looking down on his property
19 perhaps. And I don't know what the situation is. We have
20 no photographs as part of this application.

21 But clearly if somebody wants to go around the
22 gate on the waterside -- or around the fence on the
23 waterside, they can. It's only 15 feet down the slope.

24 And given that we have a fence at the toe of the
25 levee, I am not convinced that this is going to add

1 significantly to security to the property.

2 I am sure that it will add significantly to the
3 maintaining agency's time, inconvenience, cost. And as
4 someone who is going through gates on a daily basis, being
5 a livestock manager, they are a pain in the derriere. And
6 I wish we had a bump gates instead of having to get out
7 and -- park, get out, open, then go through, park and
8 shut. That takes -- in my opinion it takes a lot more
9 than two minutes. In my opinion it's five minutes per
10 gate probably. But in any case, they are difficult.

11 And I think that during flood operations and
12 flood times, if the gates are left open, that is not
13 really an inconvenience. What is an inconvenience more is
14 the annual maintenance periods where we're trying to
15 maintain vegetation and levee crowns, grading and sloping
16 and resloping or dragging the slopes of the levees. And
17 that's where gates and fences are -- there are significant
18 portions around these structures, at least in the area
19 where I live, that don't get graded and you have road
20 buildup and whatnot in those areas because they're not
21 regularly floated.

22 So, I don't think that this is in the public
23 interest in terms of public safety. And the public safety
24 I think is important. And so that's kind of where I'm
25 coming out on this.

1 Anybody else want to add, comment, rebut?

2 VICE-PRESIDENT HODGKINS: I don't want to rebut.

3 I think you said it pretty well from my viewpoint.

4 Although I think you also have to think of

5 suppose there is a problem out here with erosion and now

6 you've got a six-foot chain-link fence to deal with as

7 well. And I know the chance of that is small. But the

8 chance of a 100-year flood is small as well, and that's

9 what we deal with.

10 But I would like to apologize to the applicant.

11 And I don't want pick on staff. But we have got to get

12 better - and I know staff is shorthanded - in helping

13 people understand what the issues are associated with

14 bringing forward a permit like this. I agree with Ms.

15 Suarez here. We've got to work harder on helping people

16 to understand why we're doing what we're doing, and not

17 leaving people with the impression that we threw -- and I

18 know that's not necessarily even this staff -- but that we

19 threw the application in the garbage can.

20 I know it's difficult. There's limits. But

21 we've got to get better.

22 SECRETARY DOHERTY: In defense of the staff, I

23 feel that if I had gotten that letter, I'd think, "What in

24 the heck are they talking about?" I'd be on the phone.

25 I'd call you. I'd come down there, "Explain this to me."

1 So I think that there's responsibility on both
2 parties. I don't think it's just responsibility on our
3 staff. I think that there's an awful lot that has to be
4 done. So I think the applicant also needs to accept some
5 responsibility.

6 PRESIDENT CARTER: Ms. Rie.

7 BOARD MEMBER RIE: No, I'm done.

8 PRESIDENT CARTER: You look like you were ready.

9 Okay. Anybody else want to comment?

10 I'd like to echo Butch's apology. Mr. Murphy, I
11 really do apologize for our process. It is not perfect.
12 It's far from perfect. And we will endeavor to improve
13 that in the future. But I apologize for the inconvenience
14 and poor communication that our staff has had with you in
15 this regard.

16 SECRETARY DOHERTY: Would a motion be in order?

17 BOARD MEMBER RIE: Can I make a comment?

18 PRESIDENT CARTER: Absolutely.

19 BOARD MEMBER RIE: You know, I think -- you know,
20 I agree with everything you said, President Carter. But I
21 think we're making an example out of this one particular
22 application. And I think we ought to consider perhaps
23 allowing one gate, the gate where the next gate is 1800
24 feet away. You know, we've allowed gates before, we've
25 allowed fences before, and it's allowed in Title 23. And,

1 yes, it's an inconvenience. However, I think we should
2 consider at least one gate.

3 SECRETARY DOHERTY: What about the fences?

4 BOARD MEMBER RIE: Maybe we can allow the gate
5 across the levee crown and, you know, maybe it can go two
6 or three feet down the levee slope.

7 SECRETARY DOHERTY: So you'd have just one fence,
8 not two?

9 BOARD MEMBER RIE: Yes. I think, you know, we
10 should look at -- if there's room to compromise here, you
11 know, I just think it's the right thing to do, and not to
12 use this one application as an example. I think we're all
13 concerned about public safety and the ability to maintain
14 the levees. But where it's such a large piece of property
15 and the concerns, and because it's allowed in Title 23 and
16 we've allowed gates and fences before, we ought to
17 consider one gate.

18 PRESIDENT CARTER: Comments?

19 BOARD MEMBER SUAREZ: Mr. President, I have a
20 comment, I think to kind of follow up on Ms. Rie's point.

21 We don't have information regarding this
22 application. We don't -- we are not familiar with the
23 property. The property owner has indicated he's willing
24 to sit down and try to figure out a better way of meeting
25 his needs but at the same time taking care of the very

1 serious and very real needs that our team has in terms of
2 emergency and maintenance.

3 And I do think that again we owe the public that
4 are paying the taxes and paying the bonds that make our
5 work possible an opportunity to -- we owe them an
6 opportunity to treat them fairly. That I would just like
7 to suggest to postpone this and have parties get together
8 again and see if there's an opportunity to figure out a
9 solution.

10 So my recommendation would be to --

11 PRESIDENT CARTER: Is that a motion?

12 BOARD MEMBER SUAREZ: Yes, to not act on this
13 permit right now, give the parties the next month to sit
14 down and see if there's a way of addressing these
15 concerns.

16 BOARD MEMBER RIE: Second.

17 PRESIDENT CARTER: Okay. We have a motion to --
18 would that be a postponement, a table, a continuance of
19 the hearing? What's appropriate here?

20 BOARD MEMBER BROWN: Mr. Chairman?

21 PRESIDENT CARTER: Just a second. If I can get
22 some clarification.

23 LEGAL COUNSEL CAHILL: I think you can use
24 "continuance".

25 PRESIDENT CARTER: Okay. Is that acceptable?

1 It's a motion to continue the hearing to allow
2 the applicant and Board and DWR staff to get together with
3 them to discuss ways to satisfy both parties' concerns.

4 And we have a second, Ms. Rie?

5 BOARD MEMBER RIE: Yes.

6 PRESIDENT CARTER: All right. Mr. Brown.

7 BOARD MEMBER BROWN: Thank you, Mr. Chairman.

8 I personally don't like to see fences down into
9 the waterside of any levee for reasons discussed. But
10 since we have done that, I -- in this case, I believe that
11 property rights would trump the additional maintenance,
12 time or expense that we might bear in dealing with the
13 fence.

14 PRESIDENT CARTER: Okay. Other comments?

15 Okay. Does staff wish to comment on the motion
16 before the Board as it stands now? And that motion, I
17 repeat, is to continue this hearing on this application to
18 allow Board staff and the parties to -- and the applicant
19 to get together and reach a compromise.

20 Staff, no comment?

21 The applicant. Do have a comment, Mr. Murphy?

22 MR. MURPHY: None. I'm perfectly happy to
23 proceed on that basis.

24 PRESIDENT CARTER: Okay. That's the motion we
25 have before us.

1 Any further discussion?

2 Mr. Punia, would you call the roll.

3 EXECUTIVE OFFICER PUNIA: Board Member John

4 Brown?

5 BOARD MEMBER BROWN: Aye.

6 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

7 SECRETARY DOHERTY: No.

8 EXECUTIVE OFFICER PUNIA: Board Member Emma

9 Suarez?

10 BOARD MEMBER SUAREZ: Aye.

11 EXECUTIVE OFFICER PUNIA: Board Member Butch

12 Hodgkins?

13 VICE-PRESIDENT HODGKINS: No.

14 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

15 BOARD MEMBER RIE: Aye.

16 EXECUTIVE OFFICER PUNIA: Board President Ben

17 Carter?

18 PRESIDENT CARTER: No.

19 The motion fails.

20 What's the Board's pleasure here?

21 SECRETARY DOHERTY: I would like to make a motion

22 that we deny the application because of Title 23, Division

23 1, Chapter 1, Article 3: It impairs the inspection of

24 floodways or project works, it interferes with the

25 maintenance of the floodways, and it interferes with the

1 ability to engage in flood fighting, patrolling or other
2 flood emergency activities.

3 PRESIDENT CARTER: Okay. Do we have a second?

4 VICE-PRESIDENT HODGKINS: Second.

5 PRESIDENT CARTER: Okay. Motion to deny the
6 application with a second?

7 Any discussion.

8 VICE-PRESIDENT HODGKINS: I would point out that
9 the fact that this application is denied doesn't prevent
10 the applicant from coming to staff and looking for a
11 different approach. But generally from my perspective,
12 the idea of putting another gate is not something that I
13 would support unless the Corps is willing to get up here
14 and say that they think it's okay as well.

15 PRESIDENT CARTER: Okay. Any other comments?

16 Does the staff or applicant wish to comment on
17 this motion?

18 Okay. Mr. Punia, would you call the roll,
19 please.

20 EXECUTIVE OFFICER PUNIA: Board Member Emma
21 Suarez?

22 BOARD MEMBER SUAREZ: I'll pass for now.

23 EXECUTIVE OFFICER PUNIA: Board Member Butch
24 Hodgkins?

25 VICE-PRESIDENT HODGKINS: Aye.

1 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

2 BOARD MEMBER RIE: No.

3 EXECUTIVE OFFICER PUNIA: Board Member John

4 Brown?

5 BOARD MEMBER BROWN: No.

6 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

7 SECRETARY DOHERTY: Aye.

8 EXECUTIVE OFFICER PUNIA: Board President Ben

9 Carter?

10 PRESIDENT CARTER: Aye.

11 Motion fails.

12 BOARD MEMBER BROWN: You still have a pass.

13 PRESIDENT CARTER: Oh, we do have a pass.

14 BOARD MEMBER SUAREZ: No.

15 PRESIDENT CARTER: I'm sorry?

16 BOARD MEMBER SUAREZ: It's a no.

17 PRESIDENT CARTER: No.

18 Motion fails.

19 Any other ideas, ladies and gentlemen?

20 (Laughter.)

21 BOARD MEMBER BROWN: I'll make a motion that we
22 allow the fence to be constructed, in the belief that, as
23 much as I hate to have fences down in the river area, we
24 certainly have a precedent set that others have done this.
25 And until this Board changes that policy, I think that the

1 property rights prevail. I'll make a motion that we allow
2 the fence.

3 BOARD MEMBER SUAREZ: I'll second that.

4 PRESIDENT CARTER: So we have a motion to grant
5 the application and a second, the application as
6 submitted.

7 Okay. Discussion?

8 Comment from staff?

9 No new information?

10 Applicant?

11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

12 Actually I would like to add something. If the
13 fence is allowed on the waterside, one of the conditions
14 will probably be that the fence has to be removable and
15 that during the high water event that it would be stored
16 so that the waterside access would exist. So every year
17 prior to flood season that the fence would have to be
18 removed.

19 LEGAL COUNSEL CAHILL: You know, I'm wondering
20 whether, since you don't have a draft permit in front of
21 you and you don't know what the conditions of such a
22 permit might be, whether you want to continue this, bring
23 it back with a permit -- a draft permit that you could
24 respond to.

25 BOARD MEMBER SUAREZ: Well, what a lovely idea.

1 PRESIDENT CARTER: We have a motion and a second
2 to grant the application in the absence of a draft permit.

3 BOARD MEMBER SUAREZ: I was wondering if Mr.
4 Brown would consider amending his motion to again continue
5 this item until we actually have an application before us
6 to consider with the appropriate information and a
7 proposed permit.

8 BOARD MEMBER BROWN: Certainly I would be
9 receptive to that if that's the Board's pleasure.

10 The concern here with the application is that --
11 and certainly there is a precedent of setting these fences
12 down into the waterside. And I don't -- I don't see how
13 we can start changing that policy without establishing
14 some different ground rules. I think it would be unfair
15 to the property right holder on that basis.

16 By developing a new permit application, I'm not
17 sure what that would add to our decision. I would
18 certainly be receptive to having the staff to try to
19 negotiate reasonable criteria in the permit. And if a
20 reasonable criteria can be negotiated, as to taking the
21 fence down or the exact location of the fence and such,
22 and we can get staff concurrence on that, then we move
23 ahead. If for some reason that staff objects to the
24 design of the fence or the location or the maintenance or
25 operation, then bring it back to the Board for our

1 reconsideration.

2 Otherwise, I'll amend the motion that we grant
3 the application with the proviso that staff can be
4 satisfied with the permit as drafted.

5 So amended, Mr. Chairman.

6 SECRETARY DOHERTY: If staff can support it?

7 BOARD MEMBER BROWN: The point being is that
8 until we change policy on whether or not we allow this
9 kind of construction, I think we are obligated to permit
10 the applicant to proceed. But a new permit has to be
11 requested or a design that shows that it's reasonable and
12 acceptable and that staff is not denying anything without
13 just reason, which I'm sure they would not.

14 So the motion, to clarify it a little bit for
15 myself and the rest of you, is that I make a motion that
16 we grant the applicant the permission to put in the fence
17 as long as the design, location, and such is acceptable to
18 staff. If it is not, then bring it back before this
19 Board.

20 So moved.

21 PRESIDENT CARTER: Okay. Let's see. Ms. Rie,
22 were you the one who seconded the motion?

23 Who seconded the motion?

24 SECRETARY DOHERTY: Emma did.

25 BOARD MEMBER SUAREZ: I did.

1 PRESIDENT CARTER: Emma, do you accept that?

2 BOARD MEMBER SUAREZ: Absolutely.

3 PRESIDENT CARTER: Okay. So we have a motion to
4 grant the application with the provision that the fence
5 and gate design is acceptable to staff. Okay?

6 BOARD MEMBER BROWN: Yes, sir.

7 PRESIDENT CARTER: Discussion?

8 I might point out that, when we talk about
9 policy, I don't know that that there really is a policy.
10 There's regulations and there's precedent. And each one
11 of these things has been decided by staff in the past or
12 the Board in the past or now the Board on a case-by-case
13 basis. I've got to believe some of them have been
14 accepted and some of them have been denied. So I don't
15 know that the Board or the staff really has a policy per
16 se. It's a case-by-case thing.

17 The other thing, in terms of asking staff to do
18 this, you're putting them in kind of a tough situation,
19 because they don't support the application to begin with
20 and support the idea. So that puts them in somewhat of a
21 difficult situation, but I'm sure not insurmountable.

22 BOARD MEMBER SUAREZ: I'm sorry, Mr. President,
23 but it wouldn't be the first time we direct staff to do
24 something they originally oppose.

25 PRESIDENT CARTER: I recognize that.

1 BOARD MEMBER RIE: And I think that there's some
2 guidance in Title 23, the section that Ms. Cahill
3 referenced earlier. I forget what it is, 26, 126.
4 There's specific criteria in Title 23 that you must meet
5 in order to get your gate approved. You know, there has
6 to be a certain width, a certain length, it has to be at a
7 certain angle. So I think that if staff can follow Title
8 23, the guidance is there

9 PRESIDENT CARTER: Okay. Mr. Punia.

10 EXECUTIVE OFFICER PUNIA: I'm just getting one
11 more clarification.

12 So you are asking us to approve this permit
13 without getting the Corps's concurrence on this permit?

14 PRESIDENT CARTER: Is that the motion?

15 BOARD MEMBER BROWN: Yes.

16 LEGAL COUNSEL CAHILL: You know, I would point
17 out that unlike the last one which didn't involve project
18 levees, I think you would not want to grant it
19 unconditionally without knowing that the Corps finds it
20 acceptable.

21 EXECUTIVE OFFICER PUNIA: And I agree with the
22 counsel recommendation. Under the Corps regulations,
23 208-10, that the district engineer has to weigh in before
24 we approve these type of projects.

25 BOARD MEMBER RIE: Is staff planning on sending

1 it to the Corps? Because we heard earlier that staff
2 didn't send it originally.

3 EXECUTIVE OFFICER PUNIA: Because we were denying
4 the application we didn't send it. If we are approving
5 it, then we need to involve the Corps and seek their
6 input.

7 BOARD MEMBER SUAREZ: I thought that --

8 EXECUTIVE OFFICER PUNIA: I didn't hear, Emma.
9 You're --

10 BOARD MEMBER SUAREZ: I thought that the process
11 was that you send it right when you got the application,
12 not after you made the decision.

13 EXECUTIVE OFFICER PUNIA: I need to check.

14 Did we send the application to the Corps, John?

15 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO: No,
16 we did not.

17 PRESIDENT CARTER: Normally -- and this again
18 comes from the discussion with the colonel and his staff
19 two or three or four weeks ago, that they asked our staff
20 not to send them permits that the staff would not normally
21 approve and support. And so I think staff is following
22 the protocol here in terms of, if staff is not supporting
23 it, the Corps doesn't really want to see it because it
24 just adds to their workload. If staff wants to push the
25 application, then the Corps is willing to consider it.

1 So at this point, since the Board wants to push
2 the application, that would be the appropriate time to
3 submit it to the Corps.

4 BOARD MEMBER BROWN: Mr. Chairman, I think Ms.
5 Cahill's right. I think in this instance - change my
6 position - that the Corps should review this. So I'll add
7 that to my motion.

8 PRESIDENT CARTER: So it would be subject to
9 Corps concurrence.

10 BOARD MEMBER BROWN: Yes, sir.

11 PRESIDENT CARTER: Is that acceptable to the
12 seconder?

13 BOARD MEMBER SUAREZ: Absolutely.

14 PRESIDENT CARTER: Okay.

15 EXECUTIVE OFFICER PUNIA: I think our Chief
16 Engineer has a comment, Ben.

17 PRESIDENT CARTER: Mr. Hester.

18 CHIEF ENGINEER HESTER: I would like to also get
19 some clarification on the levee maintaining agency's
20 endorsement. We typically do not begin the permit process
21 until we have the LMA endorsement. And that was a key
22 element of this recommendation to deny, that we put an
23 awful lot of weight in the maintaining agency's
24 determination whether this will impact them in their
25 ability to maintain the levee and/or flood fight. So I

1 would want some clarification in the motion about whether
2 we would be directed to issue this permit without the
3 LMA's endorsement.

4 BOARD MEMBER RIE: I don't think that's a
5 requirement to issue a permit.

6 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:
7 It's actually an issue of the application.

8 BOARD MEMBER RIE: Pardon me?

9 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:
10 It's an issue of the application, because -- in
11 this case, like I stated in my presentation, that as part
12 of the application normally -- prior to receipt of the
13 application they normally go before the local maintaining
14 agency and receive their endorsement. In this case,
15 because that it is a state maintained area, they are not
16 required because the state itself is the local maintainer.
17 So there's a sign off on the application process,
18 Item 4 --

19 BOARD MEMBER RIE: Yes, but --

20 PRESIDENT CARTER: Right. But that doesn't mean
21 that the support of the local maintaining agency is a
22 hurdle that necessarily has to -- that's a condition of
23 approval of the permit. The applicant has appealed the
24 recommendation of the staff and the local maintaining
25 agency, and it's up to the Board to decide, and regardless

1 of what staff and the local maintaining agency recommends.

2 So, we have a motion to grant the application
3 subject to the design being acceptable to staff and Corps
4 concurrence.

5 Any further discussion?

6 BOARD MEMBER BROWN: Call for the question.

7 PRESIDENT CARTER: Mr. Punia, would you call the
8 roll.

9 EXECUTIVE OFFICER PUNIA: Board Member John
10 Brown?

11 BOARD MEMBER BROWN: Aye.

12 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

13 SECRETARY DOHERTY: No.

14 EXECUTIVE OFFICER PUNIA: Board Member Emma
15 Suarez?

16 BOARD MEMBER SUAREZ: Aye.

17 EXECUTIVE OFFICER PUNIA: Board Member Butch
18 Hodgkins?

19 VICE-PRESIDENT HODGKINS: No.

20 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

21 BOARD MEMBER RIE: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member Ben
23 Carter?

24 PRESIDENT CARTER: No.

25 Okay. So the motion fails.

1 Ladies and gentlemen, if I could make a
2 suggestion that we continue this and basically return to
3 the original motion that Ms. Suarez made and direct the
4 applicant and staff to continue discussions. We're really
5 at an impasse right now. I don't think any further
6 discussion is going to be any more productive. We need
7 some new information.

8 So with your concurrence, I'd like to continue
9 this hearing to a future date.

10 Any objections?

11 BOARD MEMBER BROWN: No objection.

12 PRESIDENT CARTER: Okay. So we are going to
13 continue this hearing at this point.

14 You guys get together.

15 Also, I want to just reiterate Ms. Suarez's and
16 Vice President Hodgkins' recommendations. I felt that the
17 staff reports on both of these two hearings that we had
18 this morning, 9A and 9B, was very thin. When we are doing
19 evidentiary hearings, it's different than the consent
20 calendar. In my mind, we need to have a staff report that
21 gives the Board members a very thorough picture of what's
22 going on on these sites and in these projects and what's
23 being requested and what's being considered. These
24 reports that we had today in my opinion were not
25 acceptable. Okay? So, guys, please work on that.

1 All right. Ladies and gentlemen, we're going to
2 recess for lunch.

3 We are pretty far behind on our schedule. What
4 I'd like to request is that people come back in 45
5 minutes. So we will reconvene here at 1:30.

6 Thank you.

7 (Thereupon a lunch break was taken.)

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1 AFTERNOON SESSION

2 PRESIDENT CARTER: Good afternoon, ladies and
3 gentlemen. Welcome back to the Central Valley Flood
4 Protection Board meeting.

5 As you recall, we were wrapping up on Item 9B in
6 hearings, which was to be continued.

7 And at this time we'd like to go on to Item 10 on
8 our agenda. As you can see, we are behind schedule, so
9 we'll try and pick up the pace here.

10 So with that, Item 10, Delta Levees Maintenance
11 Subventions Program, to consider approval of the
12 staff-recommended reimbursement amount under the Delta
13 Levees Maintenance Subventions Program.

14 Mr. Miramazaheri.

15 Good afternoon.

16 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

17 Good afternoon.

18 PRESIDENT CARTER: Welcome back.

19 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

20 Thank you. It's a pleasure to be here.

21 Members of the Board, Mr. President. Just for
22 the record, my name is Mike Miramazaheri. I'm the Program
23 Manager for Delta Levees Program, including subventions.

24 (Thereupon an overhead presentation was

25 Presented as follows.)

1 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

2 And what I'll do today is I will go over -- real
3 quickly as a review go over what was presented in the
4 September Board meeting. And as you recall, the September
5 Board meeting deferred a decision to this meeting. And
6 that's why I'm here. And then we'll go over the revised
7 funding plan that the staff recommends for Board approval
8 and consideration.

9 At the September 19th Board meeting, we talked
10 about the authority, which is in Water Code Sections 12980
11 to 995. We also discussed the program intent. And bottom
12 line, the intent of our program is to provide financial
13 and technical assistance to the local agencies maintaining
14 the levees in the Delta.

15 As far as the program goal, we discussed is to
16 increase the level of protection. And we also talked
17 about guidelines and process -- procedures, I must say --
18 guidelines and procedures that Board approved last year
19 when I presented it to the Board.

20 And then I provided some historical perspective
21 as far as subvention programs, where we started and where
22 we are. And, in summary, in the last 20 years through
23 subventions program -- more than \$100 million was invested
24 in the Delta levees through the subventions program.

25 We also discussed the funding overall and the

1 proposal. And then the funding plan that I presented in
2 September to the Board was based on \$15 million for
3 subvention plan to be spent in fiscal year 2008-2009.

4 And one other item that we talked about is status
5 of 2007-2008, the last fiscal year work. And to summarize
6 that, the work with many of the districts are still being
7 continued. They are working on the final claims. And I
8 can report that to date a little over \$3 million through
9 progress claims and through advances from last fiscal year
10 has been paid to the district. We don't know what the
11 total dollar amount would be until we receive all the
12 final claims for last year's work. And at that time we'll
13 have a better idea.

14 So at the end of September 19th presentation, I
15 asked the Board to consider staff recommendation. And one
16 was to allow the staff to continue using the procedures
17 and criteria which was approved last year.

18 --o0o--

19 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

20 And the second part of the staff recommendation
21 was to approve Table 2, which again Table 2 is a funding
22 plan and it was based on \$15 million.

23 --o0o--

24 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

25 Through discussions at the Board meeting, there

1 was several concerns was raised by the Board members. I
2 tried to address them one at a time.

3 One was if SB 5 changed in any way the
4 subventions program. And I indicated, as I've been
5 advised through our legal counsel and to the best of my
6 knowledge, the program itself -- there is no change in the
7 program itself. I will defer that final answer to the
8 Board Counsel, Ms. Cahill, to basically speak on that.

9 On the second item -- or second concern that was
10 raised was whether there has been a communication between
11 the staff and the local agencies. And there has been
12 numerous communications between local agencies and the
13 staff. And, you know, in fact, we are in continuous
14 communication through the monthly meeting of the Joint
15 Bay-Delta Public Advisory Committee and Delta Levee
16 Habitat Advisory Committee at least once a month. And
17 between the month, there are phone calls or meetings or
18 whatever is needed to make sure that the program is, you
19 know, sailing smoothly.

20 In reference to the funding plan, specifically
21 several of us, including some of us from my office and
22 myself, some district engineers, some representatives from
23 Central Valley Flood Control Agency, we met back in, I
24 believe it was, June and then discussed it. And as a
25 follow-up to that, I received a letter from Central Delta

1 Water Agency, which is in your packet. And that shows
2 there's been a communication not only in terms of verbal
3 and meetings and phone calls; also written communication
4 between the locals. And I think -- I included that letter
5 in your package this time to just make sure that concern
6 of communication has been addressed in the past.

7 In terms of funding source, there were questions,
8 one on the source of it, which I stated Proposition 84 is
9 a source of funding for this fiscal year. And also there
10 was a question of authority in terms of decision making,
11 of who makes that decision. I stated that the language of
12 Prop 84 allows Department to flood safe to make a decision
13 on the funding allocated for each program.

14 And then procedures and criteria of course did
15 not reflect the new name of the Board, and it still had
16 Reclamation Board instead of Central Valley Flood
17 Protection Board. I apologize for that, but that's been
18 corrected at this time.

19 And, again, in terms of the program itself, based
20 on my knowledge, there isn't any change as a result of SB
21 5.

22 --oOo--

23 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

24 Now, since September Board meeting, there has
25 been some other events taking place that I'd like to

1 address at this time.

2 In terms of procedures and criteria, again, as I
3 said, the name change has been reflected on the new
4 version that is before you as part of the package. Now,
5 it does no longer refer to Reclamation Board. It talks
6 about Central Valley Flood Protection Board.

7 And we took advantage and made a couple other
8 minor changes in that too for Board consideration. One is
9 application submittal deadline. Because of the funding
10 and also because of more work that's being done by the
11 local agencies, it's actually advised to give them a
12 little bit more time for them to submit their application.
13 So the application deadline now, what I'm proposing in a
14 new procedure, is to be July 1. And that gives them
15 basically two additional months to prepare their plan and
16 to submit it to us. I think it would help the district to
17 put a better package together, and it would help us also
18 not to have to go back and forth to get more
19 clarifications.

20 In terms of final claim deadlines, the final
21 claims, district has always -- or most of them always
22 request for extension of time. I'll give you an example.
23 Last week we sent 54 letters to all the districts granting
24 one-month extension to bring them to November 1. And to
25 reduce the work for staff in terms of paperwork and to

1 also allow more time to the districts to submit their
2 final claims, November 1 seems to be very reasonable for
3 them to send in a package. Again, this is an effort to
4 give them more time to be better prepared in terms of
5 application and in terms of final claim.

6 And, lastly, the deadline in case -- if they
7 acquire an easement, the deadline for that is also
8 reflected as November 1 in the new version before you.

9 --o0o--

10 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

11 At the joint meeting of DWR and Board members at
12 the executive level, Mr. Carter, the Board President,
13 asked me to address carry-overs from the prior years. One
14 of the handouts that I believe Lorraine gave to you now,
15 it's -- this one is a long one actually -- it has the
16 carry-overs beginning from 1987-88 fiscal year all the way
17 through 2006-7 fiscal year. The total amount of
18 carry-over is about \$27.5 million. So in other words, in
19 the last 20 years, as I said, through this program, we
20 invested more than \$100 million into the Delta through
21 2006-2007. And out of that, you know, we think there's
22 about 27.5 maybe of it that the districts invested the
23 money in their levees knowing that this money will never
24 be returned to them. And we keep track of it. And the
25 idea of keeping track of this is, if we ever have money

1 that allows us to go back and pay a carry-over, then we
2 will consider this.

3 The question that Mr. Carter asked me at that
4 meeting was whether we can consider paying the carry-overs
5 back from the funding that we have available now or not.
6 And my answer was no, because Proposition 84 does not
7 allow us to go back and pay for the work that was done in
8 the past. So in other words, the districts will not be
9 able to, you know, retrieve any part of this money at this
10 time. And I think the only reason that I did share this
11 with you is just mainly because President Carter requested
12 that and is really FYI. It's not something that we could
13 take any, you know, action on.

14 --o0o--

15 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

16 One of the things between September Board meeting
17 and this time happened is we worked with the local
18 districts more to further communications within the last
19 four weeks, and we actually requested more detailed
20 information and received more detailed information. And
21 based on the information that we have received, it was
22 staff recommendation to DWR management to increase the
23 original \$15 million for subvention to 20.

24 So the other two handouts that you just received
25 are revised funding plan that are prepared based on \$15

1 million. When I submitted the package for the Board, that
2 decision had not been made, so I submitted the original
3 funding plan based on \$15 million. But the revised one
4 now is based on \$20 million. And, again, we arrived at
5 that number based on additional and more specific
6 information that we received from the locals, and it seems
7 to be more reasonable.

8 And DWR management agreed to that, so that's why
9 I'm allowed to discuss it at this meeting of course and
10 bring it as a part of this funding plan.

11 --o0o--

12 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

13 Now, we get to the staff recommendation now. And
14 the staff recommendation basically now is that, you know,
15 for the Board the consider to approve the Procedures and
16 Criteria, which is dated October 17th, 2008 - today - and
17 includes the changes that I mentioned, you know,
18 previously.

19 And the second part of staff recommendation is to
20 approve Table 2 - and this is the revised Table 2 that I'm
21 referring to - Table 2, which is based on \$20 million.

22 --o0o--

23 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

24 With that, I'll be more than happy to take any
25 questions or concerns.

1 PRESIDENT CARTER: Thank you, Mr. Miramazaheri.

2 So the Table 2 you're referring to is the one
3 that we just got here?

4 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

5 That is correct.

6 PRESIDENT CARTER: Okay.

7 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

8 And if you go to the second page of it, under
9 Estimated Available Reimbursement, at the bottom the total
10 is \$20 million. So it's estimated by each district, and
11 the total is 20.

12 PRESIDENT CARTER: With that extra \$5 million
13 that you have allocated to the program in the last month,
14 did you just prorate that 5 million in equal percentages
15 as it was represented in September or have you given more
16 in certain areas and less in others?

17 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

18 You also have revised Table 3. And Table 3 is
19 now -- estimates that 75 percent will go to maintenance,
20 75 percent will go to fish and wildlife, another 75 to HMP
21 costs. And then 11 percent would remain for any work to
22 be done at 192-82 -- Bulletin 192-82 level.

23 If you recall -- or you have it actually before
24 you, based on \$15 million, we had 75, 75, and 46 percent
25 for HMP. Based on \$20 million, you know, we're able to

1 pay 75 percent at HMP; and in addition to that, roughly 11
2 percent on Bulletin 192-82.

3 But keep in mind, these percentages are if all
4 the districts basically do the job as they put in the
5 paper in their application. If any of those districts,
6 you know, decide that they don't want to do the levee work
7 that they initially, you know, planned, so that means
8 there's more money on the table, and as a result that 11
9 percent could change.

10 That's how the system works basically.

11 PRESIDENT CARTER: I thought the Board decided on
12 what the allocations were amongst those categories.

13 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

14 Right. The Board's decision is approval of Table
15 2 basically. And Table 2, based on this, we're saying,
16 you know, how much each district would potentially receive
17 as a maximum reimbursement. This Table 3 is based on
18 procedures and criteria, which is a guideline for us to
19 determine what percentage goes to what. And if you
20 recall, in procedures and criteria, you start with
21 maintenance and then you go to priority 1, priority 2, and
22 priority 3. And you basically start supporting each of
23 the projects at the 75 percent for maintenance and then go
24 down to priority 1, until your funding is exhausted. But
25 that's pretty much spelled out in the procedures and

1 guidelines.

2 PRESIDENT CARTER: Which the Board also approves?

3 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

4 That's why it's presented to you, absolutely.

5 PRESIDENT CARTER: Okay.

6 BOARD MEMBER RIE: Question?

7 PRESIDENT CARTER: Go ahead.

8 BOARD MEMBER RIE: There's a letter from the
9 Central Delta Water Agency dated July 9th. It's pretty
10 lengthy. And I was just wondering, were these comments on
11 the guidelines?

12 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

13 The comments in the letter or the comments that
14 are in the letter? Are you asking if the comments are in
15 the guidelines? I'm not sure what your question is.

16 BOARD MEMBER RIE: What are these comments on?
17 Are they on the guidelines we're going to approve today?

18 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

19 No. Those comments are provided to us by the
20 local agencies, is their view on how subvention, you know,
21 should proceed if we have that funding available to us.

22 BOARD MEMBER RIE: Okay. So did we make any
23 changes to the program based on this input?

24 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

25 We considered the input and we came up with the

1 funding that is part of the funding plan.

2 BOARD MEMBER RIE: Okay.

3 PRESIDENT CARTER: Other questions for Mr.

4 Miramazaheri?

5 Okay.

6 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

7 Thank you.

8 PRESIDENT CARTER: Thank you.

9 We have several members of the public that wanted
10 to address this item.

11 Mr. Aladjem.

12 MR. ALADJEM: Good afternoon, President Carter,
13 members of the Board. David Aladjem, Downey Brand, here
14 for RD 800.

15 I actually think that the best way to go about
16 this this afternoon is for my partner, Scott Shapiro, who
17 will be representing the Flood Control Association, to
18 speak first. It would be the most effective way.

19 PRESIDENT CARTER: Mr. Shapiro.

20 Good afternoon.

21 MR. SHAPIRO: Good afternoon. Thank you,
22 President Carter.

23 PRESIDENT CARTER: Let me reshuffle the deck
24 here.

25 MR. SHAPIRO: And as you reshuffle the deck, you

1 can pull out the card for Mr. Mike Hardesty, the President
2 of the Association, who had to leave and asked me to give
3 these remarks.

4 PRESIDENT CARTER: Thank you.

5 MR. SHAPIRO: I am speaking today on behalf of
6 the California Central Valley Flood Control Association.
7 The association is very appreciative of the opportunity to
8 speak to you today and to support the funding recommended
9 by the Department of Water Resources.

10 You may recall that a month ago members of the
11 flood control community expressed concerns that DWR
12 proposed to decrease subventions funding to only \$15
13 million as a way to fund the new Special Projects Fund.
14 And the members of the community felt that this was the
15 wrong approach for the 2008-2009 fiscal year, especially
16 where local agencies had already taken actions in reliance
17 upon the expected \$25 million for this year.

18 Since that meeting a month ago, as Mr.
19 Miramazaheri stated, the Association and local agencies
20 has been working with the Department of Water Resources,
21 had a number of meetings, Emails and communications; and
22 DWR has now changed its proposal to increase subventions
23 funding for 2008-2009 to the \$20 million level.

24 While we remain somewhat concerned that the 20
25 million may still be less than that which could be used by

1 the subventions program this year, we are encouraged by
2 DWR's representations that many of our local districts
3 will be able to apply for funding from the new Special
4 Projects Fund.

5 Indeed, just as our discussions over the last
6 month led to this \$20 million worth of funding this
7 consensus, we hope that dialogue between the Association,
8 its members, and DWR over the next month or two will lead
9 to consensus on criteria and requirements that will be
10 applicable to the implementation of the new Special
11 Projects Fund.

12 We look forward to continuing this cooperative
13 relationship on special projects with DWR and the Board,
14 just as we have enjoyed the cooperative relationship in
15 the past between the Association, the Board, and DWR on
16 the subventions program.

17 Thank you.

18 PRESIDENT CARTER: Thank you.

19 Any questions for Mr. Shapiro?

20 Thank you very much.

21 Mr. Aladjem.

22 MR. ALADJEM: President Carter, members of the
23 Board.

24 The reason that I asked my partner, Mr. Shapiro,
25 to actually speak first is, on behalf of Reclamation

1 District 800, who's not a member of the Association, we
2 want to second those comments very fully.

3 And I wanted to speak on behalf of 800. We're
4 one of the districts that expressed concern, as you'll
5 recall, last month. We support the Department's move to
6 \$20 million. And particularly I want to commend Mr.
7 Miramazaheri in saying that there would be the Special
8 Projects Funds also available to fund important levee
9 work. RD 800, as you may recall, last month had about --
10 was going to get a reimbursement of about \$455,000 under
11 the proposed \$15 million. This month we will get about a
12 hundred thousand dollars more. That's a good step in the
13 right direction.

14 We have, if my memory serves me correctly, about
15 \$2.6 million of work we'd like to do in the next year that
16 would not be reimbursed. And I trust, and having spoken
17 with Mr. Miramazaheri, that the Department will write
18 those criteria and the rules for the special projects to
19 allow us to compete effectively, fairly, and to really
20 allocate those Special Project Funds in a way that's going
21 to benefit the state and all the local districts. With
22 that understanding -- we understand that we're betting on
23 the come bet, but we trust the Department. We know
24 they're going to do the right thing. And so for those
25 reasons we support the proposal.

1 Thank you very much.

2 PRESIDENT CARTER: Thank you.

3 Any questions for Mr. Aladjem?

4 Thank you very much.

5 Mr. Nomellini.

6 MR. NOMELLINI: I'm Dante John Nomellini. I'm

7 here today on behalf of the Central Delta Water Agency.

8 I'm the author of the letter that was attached.

9 We support DWR's recommendation today. We expect
10 to further develop the plan. And I just might give you
11 just a brief background on why that plan came forward.

12 There's about \$725 million that's been allocated
13 to Delta levees in bond issues. And there's of course a
14 great need for levee work in the Delta. And we were
15 asked -- we, the locals, were asked to develop a plan.
16 So -- and this is difficult of course. None of us agree,
17 just like you guys have trouble agreeing on certain
18 things.

19 And so I took the task to develop the plan, and
20 we circulated it for comment and we got it. And that
21 reflects not a complete -- I didn't include everybody. In
22 fact, I may have overlooked Mr. Aladjem. But the rest of
23 the gang was in it. And our view was to lay out a plan
24 that would take, out of the 725 million, 500 million a
25 year for five years and concentrate it in the Delta.

1 One of the principal features of that plan is to
2 get beyond the cost shares that are set up under the
3 subvention program, because that authority exists under
4 special projects, which is not your domain but it's within
5 the Department's authority.

6 Special projects in the past have not been
7 applied Delta-wide. They've been focused on the western
8 Delta, eight islands, and particular items of interest,
9 some involving growing peat and things like that, that are
10 important, but we've got these other features too.

11 So that plan, the important element is to bring,
12 first of all, all the levee systems up to reach HMP
13 criteria. HMP criteria is a FEMA standard, that in order
14 for FEMA to come forward and put 75 percent in any
15 disaster in the Delta nonproject levees, you have to
16 comply with HMP. And in the 2005-2006 flood events, FEMA
17 disqualified all disaster assistance throughout the
18 nonproject areas of the Delta, so we in the State of
19 California and the locals lost federal assistance.

20 Now, the problem of getting the HMP -- HMP is
21 essentially an elevation, one foot above the hundred-year
22 flood. The pure agricultural districts don't have the
23 ability to cash flow that work and to come up with a 25
24 percent share. You can see that a lot of these things
25 don't produce a full 75 percent in the past. In fact, the

1 actual return is substantially lower than that.

2 So our proposal is to have the Department set up
3 a special project element for -- we call it local special
4 project, which would be other than the western Delta
5 islands. So if you see in that formula that was in the
6 letter, it was going to have 15 million for subventions.
7 And then I think it was like 44 and 44 split between the
8 regular Special Project Program with the Department and a
9 new local special project program. And that is our
10 recommendation as to how we get from here to bring the
11 Delta up to some minimal level. It isn't going to protect
12 against catastrophic earthquake in that, but come up to a
13 minimum threshold that we think is appropriate.

14 So when the Department -- my letter didn't talk
15 about the current fiscal year. It talked about another
16 year, and I didn't know what we were going to do for the
17 current fiscal year. The Department came back and said
18 we've got \$50 million, not 100 million. And so they used
19 the 15 and then split the difference between the state
20 special project and the local special project. Well, that
21 caught everybody by surprise and left some of the current
22 applications in a state where there was question as to
23 whether or not they would get what they expected to get
24 under the subvention side of the program, because the
25 special cost sharing of 100 percent for HMP and 90/10 does

1 not apply to urban districts. It only applies to the
2 agricultural or non-urban districts.

3 So, anyway, there was apprehension and
4 uncertainty as to what the guidelines would be that would
5 apply to the new special projects. And that's what has to
6 be worked out, and we have to work with DWR to develop
7 that. Whether it can develop in a manner that satisfies
8 our concerns or not remains to be seen. We're optimistic.
9 We appreciate the dialogue with the Department. And
10 that's why the letter was there. The letter would bring
11 us forward in accordance with what we think would be a
12 workable solution to get us up -- first priority, make
13 sure we've got federal assistance available to the state
14 and the locals when we do have a disaster out there. We
15 don't want to lose that money. That's first priority.

16 The second one is to bring all of these districts
17 up to the Corps agricultural standard, which I think is
18 the equivalent of the state's -- there's a bulletin,
19 182-92.

20 Anyway, I hope I was helpful in explaining that
21 letter. But I'd be happy to answer any questions. I know
22 you're on a fast -- trying to catch up.

23 PRESIDENT CARTER: Any questions for Mr.
24 Nomellini?

25 BOARD MEMBER RIE: Yes.

1 Are you going to be able to, after the criteria
2 is developed, apply for the money and spend the money
3 before the end of the fiscal year?

4 MR. NOMELLINI: As I understand, the money that's
5 earmarked for the special projects can be carried forward.
6 So what can't be done -- and we've also been told that we
7 could submit these applications even while the guidelines
8 are being developed. So we have our engineers, at least I
9 do on the districts that I'm involved with, looking at
10 preparation of a special request. So it remains to be
11 seen. But we expect that work that otherwise would have
12 been in the subvention side because of the greater cost
13 share for the non-urban areas to go over to the special
14 projects and be accelerated with the higher percentages of
15 cost share, and therefore the need for the subventions,
16 would have been lower.

17 But the problem of getting applications in to get
18 work done and plans done for the current fiscal year, we
19 were anticipating this to kick in in a subsequent year.
20 But we don't want to give up that extra funding in the
21 interim, because we have -- instead of 25 available
22 potentially for what we want to do, we have 33 million.

23 BOARD MEMBER RIE: Okay. We heard a little while
24 ago that the Department wouldn't allow carry-overs for the
25 subvention side of the funding. But they're going to go

1 ahead and allow it for the special project side of it?

2 MR. NOMELLINI: Yeah, I don't know what the legal
3 status of that is. But my understanding --

4 BOARD MEMBER RIE: Does DWR want to comment on
5 that?

6 MR. NOMELLINI: They probably don't want to talk
7 to you about special projects.

8 But, anyway, here's the expert.

9 DWR ASSISTANT CHIEF COUNSEL TABOR: Mr.
10 President, members of the Board. Ward Tabor, Assistant
11 Chief Counsel for Department of Water Resources.

12 I have been personally very involved with
13 developing these guidelines as well as working with Mr.
14 Mirmazaheri's staff on the subvention program. And the
15 difference is, when you have a bond issue, the bond laws
16 prohibit spending those bond proceeds on things that were
17 incurred before it took place. The money we're talking
18 about for this fiscal year under Prop 84, if we get the
19 money encumbered, in other words if we have an agreement
20 in place that covers that money, then there's no issue
21 about carrying it over. To the extent that we don't have
22 contracts in place to encumber that money, we can go
23 through the budget process and get that money carried
24 over, because there's no prohibition because these are all
25 for expenses incurred after the bond was approved by the

1 voters.

2 So it is something we can do. It's legitimate.

3 And we've certainly done this in the past and we do do it
4 in this case too, because we don't want to lose this
5 funding either.

6 We are in the process of working on these special
7 project guidelines. They are a new thing for this
8 program. And we're going through a little bit of change
9 in management at DWR over -- at the highest level over
10 flood stuff. And so that's one of the reasons why they're
11 taking a little bit longer.

12 We do anticipate getting them out in draft form
13 and working closely with all the Delta interests to make
14 sure that we can address as many of their concerns as
15 possible and get this money going. One of the things that
16 we can do under this program is make advances to them
17 ahead of their work so that they're -- so we can help ease
18 their cash-flow situation.

19 BOARD MEMBER RIE: So there's no -- you're not
20 concerned that the reclamation districts might lose the
21 money by moving it from subventions to special projects
22 for this fiscal year? You're pretty comfortable that --

23 DWR ASSISTANT CHIEF COUNSEL TABOR: I'm confident
24 that we'll be able to spend all this money either --
25 hopefully encumber it all this fiscal year; if not, carry

1 it over into the next fiscal year if we can't encumber it
2 all now.

3 BOARD MEMBER RIE: So if there's some problem
4 with getting the criteria worked out, getting applications
5 approved, then perhaps next year we would go to over 100
6 million?

7 DWR ASSISTANT CHIEF COUNSEL TABOR: No -- well,
8 we'll be able to spend a significant portion, if not all
9 of it, or at least encumber it all.

10 BOARD MEMBER RIE: Okay. Thank you.

11 DWR ASSISTANT CHIEF COUNSEL TABOR: Thanks.

12 PRESIDENT CARTER: Thanks very much.

13 Any other members of the public that wish to
14 address this item, Delta Levees Subventions?

15 Okay. Any Board comments, questions?

16 Questions from the staff?

17 What's the Board's pleasure here?

18 BOARD MEMBER RIE: I'll move to approve.

19 PRESIDENT CARTER: Okay. We have a motion to
20 approve the --

21 BOARD MEMBER RIE: -- Table 2, Table 3, and the
22 revised guidelines.

23 PRESIDENT CARTER: -- and the revised guidelines.

24 LEGAL COUNSEL CAHILL: Could I suggest that the
25 revised guidelines be amended so that the definition of

1 "Board" read "Central Valley Flood Protection Board"? At
2 the moment there's a typo. It says "Flood Control Board."

3 BOARD MEMBER RIE: Sure. I'll include that in my
4 motion.

5 PRESIDENT CARTER: One of these days we'll get
6 that right.

7 (Laughter.)

8 PRESIDENT CARTER: It's a mouthful.

9 Okay. So there's a motion.

10 Is there a second?

11 BOARD MEMBER BROWN: I'll second it.

12 PRESIDENT CARTER: Okay. We have a motion and a
13 second.

14 Any discussion?

15 Mr. Punia, would you call the roll, please.

16 EXECUTIVE OFFICER PUNIA: Board Member Emma
17 Suarez?

18 BOARD MEMBER SUAREZ: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member Butch
20 Hodgkins?

21 VICE-PRESIDENT HODGKINS: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

23 BOARD MEMBER RIE: Aye.

24 EXECUTIVE OFFICER PUNIA: Board Member John
25 Brown?

1 BOARD MEMBER BROWN: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

3 SECRETARY DOHERTY: Aye.

4 EXECUTIVE OFFICER PUNIA: Board President Ben

5 Carter?

6 PRESIDENT CARTER: Aye.

7 Motion carries. That was easy.

8 DWR BAY-DELTA LEVEES BRANCH CHIEF MIRAMAZAHERI:

9 Thank you.

10 PRESIDENT CARTER: Thank you very much, Mr.

11 Miramazaheri.

12 Okay. Ladies and gentlemen, we'll move on to

13 Item 12 now.

14 As you recall, when we approved the agenda we
15 decided to swap Items 11 and 12. So at this point we'll
16 move into an informational briefing by the Flood
17 Maintenance Office from DWR regarding maintenance
18 achievements and challenges in and around the Sutter
19 Bypass.

20 (Thereupon an overhead presentation was

21 Presented as follows.)

22 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

23 President Carter, General Manager Punia, members
24 of the Board. I want to thank you for the opportunity to
25 come before you and discuss the accomplishments of the

1 Flood Maintenance Office in the Sutter Bypass area.

2 My name is Noel Lerner, and I'm the Chief of the
3 Maintenance Support Branch in the Division of Flood
4 Management.

5 And I wanted to describe what we've been able to
6 accomplish especially over the last three years when we've
7 received a significant increase in funding from the
8 General Funds. And with that money we've been able to
9 purchase equipment that has allowed us to more efficiently
10 go out into the channels and do our levee work and our
11 maintenance, and also enter into contracts with the
12 California Conservation Corps and the Department of
13 Forestry. Because as the environmental regulations have
14 changed, our practices have become more labor intensive
15 and those contracts were very important for us to be able
16 to do a lot of the vegetation management that I'll be
17 talking about.

18 We've also been able to use money from AB 142 and
19 Proposition 1E to do a number of large capital improvement
20 projects that are considered nonroutine maintenance, one
21 of which was the Tisdale Bypass sediment removal, which
22 the Board was active in; and the two projects, the Weir 2
23 rehabilitation and the Willow Slough Bypass, which the
24 Board acted upon permits for that last meeting.

25 And I'd like to start off by describing what

1 programs our office does and then what we've done under
2 those programs in the Sutter Bypass area, recognizing that
3 our Sutter Maintenance Yard is also active in doing
4 similar work up in Middle Creek, up in Chico, Cherokee
5 Canal, and in the Feather and Bear rivers. So this is
6 only a portion of the work that they've been doing.

7 After that, I'd like to describe what we're going
8 to be doing, especially in the Sutter Bypass in the area
9 of vegetation control and management, and discuss some of
10 the modeling results that we've completed. That's
11 hydraulic modeling.

12 And after that, if there are questions, I'd be
13 glad to answer them.

14 --o0o--

15 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: The
16 Flood Maintenance Office has five programs that all our
17 work is conducted under. They are channel maintenance,
18 levee maintenance, flood control facility maintenance,
19 environmental initiatives, and maintenance area formation.
20 And I'll be discussing the first three for the Sutter
21 Bypass area.

22 --o0o--

23 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: In
24 the channel maintenance we've had two major components,
25 sediment removal and vegetation management.

1 --o0o--

2 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: As
3 you are aware, we removed last year 1.8 million cubic
4 yards of sediment from Tisdale Bypass. And this year
5 we're working on construction of the Colusa State
6 Recreation Area Mitigation Site that was required for the
7 mitigation to removal of habitat from the bypass.

8 And as I'll talk about later, you can see in the
9 front of -- this is pictures taken after the removal from
10 the front of the weir. And that bridge is no longer
11 there. As of last week it was removed.

12 With those two projects, we should be able to
13 pass, instead of the previous 22,000 cfs down the bypass,
14 close to 32,000 cfs. So that's been a major
15 accomplishment.

16 --o0o--

17 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: In
18 terms of vegetation management, this is an ongoing
19 activity, and it requires after we've gone into an area --
20 and you can see these are before and after pictures where
21 we have cleared an area -- it requires us to go back in
22 subsequent years and continually removal brush that may
23 grow back. And what we're trying to do is take an area
24 that is now in scrubs and shrubs and convert it into a
25 grass area. And that's a long-term process.

1 And as you'll see when I highlight the areas that
2 we began to clear in 2005 and 6, you'll see that we're
3 continually adding to the list, which means we have more
4 and more areas that we have to stay on top of through
5 subsequent programs of mowing, disking, hand spraying,
6 whatever we can do to keep those areas clear.

7 SECRETARY DOHERTY: Mr. Lerner?

8 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

9 Yes.

10 SECRETARY DOHERTY: The picture up here, where
11 exactly on the Sutter Bypass is that located

12 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: I
13 think that's along the eastern -- the eastern barrow
14 canal.

15 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

16 Looking out from Weir 2 toward the old growth
17 area.

18 SECRETARY DOHERTY: Weir 2, is that the one
19 you're replacing?

20 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes.

21 SECRETARY DOHERTY: And that's looking to the
22 east from there?

23 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

24 Looking to the west.

25 SECRETARY DOHERTY: -- to the west from there?

1 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

2 Yes.

3 SECRETARY DOHERTY: Okay. Thank you.

4 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

5 Areas -- the Butte Slough Wildlife Refuge, we
6 went in there because there were some issues with the
7 local landowner, the orchard next door and erosion, so we
8 cleared that area. And the U.S. Fish and Wildlife, we
9 worked with them hand-clearing in their refuge. At Long
10 Bridge and Highway 20, in that area, we did large
11 removals. We worked on the toe roads. Down at Nelson
12 Bend Rock Weir we cleared 40 acres in there, and
13 approximately 50 acres in Tisdale Bypass.

14 --o0o--

15 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: The
16 following year you can see we tried to keep up with
17 clearing those areas. And we began clearing the collector
18 canals in Sutter County. And those canals carry drainage
19 that are associated with the eastern levee. And there's
20 about 50 miles or so of collector canals, and we began a
21 program of going in and removing the vegetation in those
22 collector canals every year.

23 And again we tried to go back to Nelson Weir and
24 Tisdale Bypass and work on the areas that we had cleared.

25 --o0o--

1 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: The
2 same thing the subsequent year. The Butte Slough Wildlife
3 Refuge I think we increased the disking areas. Same thing
4 at Long Bridge. As we had been able to knock down heavy
5 growth, we could add to the acreage cleared.

6 --o0o--

7 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: And
8 this year we've made -- and I think some of you on the
9 Board were able to come out on a field trip and see what
10 the U.S. Fish and Wildlife Service has accomplished in the
11 old growth area. They significantly removed in about -- I
12 think initially 20, but they by this month have cleared
13 some more area, maybe 30 acres, and gotten rid of the
14 brush.

15 And the top picture is an area that DWR, the
16 Sutter Maintenance Yard, began working. That's on the
17 north end of the old growth area that's owned by a duck
18 club. And that abuts the wildlife refuge. So while the
19 wildlife refuge staff was working from the south-north, we
20 were working from the north-south. And you can see we
21 have a shredder. We were able to rent a shredder to go in
22 and really clear the thicket -- thick undergrowth. And
23 you can see on the right of the top picture how they've
24 cleared a channel through that old growth area. And our
25 hope is by the end of next year to clear and have the old

1 growth area cleared for longitudinal flow down the
2 channel.

3 This was a small bobcat that we rented with a
4 shredder in front. And it wasn't really able to handle
5 the growth. We've been able to purchase a larger
6 shredder, which should be much more productive next year.
7 And we'll be getting another shredder the following year.

8 So this is an area, as you'll see later, that
9 we're looking at making significant in-roads in clearing.

10 And on Tisdale Bypass is we've just cleared --
11 last year done the sediment removal project. And you saw
12 what it looked like after that. We hope to mow all 100
13 acres this year by the end of November.

14 Like, we were set behind -- because of the
15 no-burn days, we were set behind on our levee burning
16 program. So that's caused delays in the work we'd like to
17 do. And we're going to have to look at prioritizing where
18 we go for the remainder of the season.

19 I did put on here grazing that was done. That
20 wasn't actually done by us but from others. And we're
21 looking at incorporating grazing where we can and then
22 possibly in the bypass. We've been working with Fish and
23 Game down on the Feather River. And they've been both on
24 the right and left banks there. So that's something you,
25 know, we're considering adding to what we can do.

1 --o0o--

2 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: As
3 for levee maintenance, we have our routine levee
4 maintenance where, as I said, we burn the levees. We've
5 also had a project, part of the PL 84-99, a slurry wall
6 that was built on the Wadsworth Canal, and that was the
7 Corps that did that for us.

8 We've also done a major graveling of the crown
9 roads. We're required to have an all-weather road
10 surface. And the Sutter Bypass, I don't know if you've
11 had the chance to ride down it before, but because of all
12 the heavy traffic there, it was washboarded.

13 And we've done about 33 miles of new gravel on
14 Sutter Bypass and Wadsworth. So it was about 9 over on
15 the Wadsworth Canal, 22 on the Sutter Bypass. This was
16 done under a single contract. The yards were also able to
17 do some rocking at Tisdale that needed to be done because
18 of the work the previous summer.

19 The slurry wall was to deal with underseepage
20 over by the Dean property where Wadsworth enters Sutter
21 Bypass. And that was completed I think in September.

22 Our yearly maintenance for Tisdale Bypass, the
23 east levee of the Sutter Bypass, Wadsworth Canal, and
24 Maintenance Area 3, which is down by the Feather River --
25 the confluence of the Feather River.

1 --o0o--

2 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: And
3 the last element that I'm going to talk about, the flood
4 control maintenance facilities. Bridges aren't usually
5 thought of as flood control facilities. But when they
6 built the east levee of the Sutter Bypass and impacted the
7 drainage in Sutter County, we were required to maintain
8 certain bridges. And we've had a program to replace six
9 of those bridges. We mention the Weir 2 Willow Slough
10 hydraulic structures. And we also have the Butte Slough
11 outfall structure that we're maintaining.

12 --o0o--

13 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: We
14 also have three pumping plants that we're required to
15 maintain that take drainage from Sutter County that
16 doesn't flow by gravity into Wadsworth Canal, and actually
17 pump that into the bypass. And beginning in year 2006 and
18 7, we had a two-year program where we rebuilt the
19 impellers and the motors.

20 And we also have a program now where we're
21 updating the control system for the pumps and putting in
22 back-up generators.

23 These are the bridges. And I told you about
24 Tisdale Bridge that we removed. And it opened up Tisdale
25 Bypass for the design flows.

1 And this is the Weir 2 and Butte Slough outfall
2 structure that we're going to be rehabilitating. We're
3 having a diving team inspect that in October, this month.

4 --o0o--

5 SECRETARY DOHERTY: Pardon me. Would you move
6 that back just one for a moment.

7 Now, this is the one -- this is number 2 that's
8 being replaced?

9 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:
10 Yes.

11 SECRETARY DOHERTY: That's the same view.

12 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: And
13 that's south -- that picture that was taken was south of
14 Willow Slough.

15 SECRETARY DOHERTY: So you're saying that this is
16 a different angle?

17 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:
18 Yeah, that was south.

19 SECRETARY DOHERTY: But you said they were
20 looking west and that one's looking west.

21 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:
22 Correct. But we were south of Willow Slough
23 looking west.

24 SECRETARY DOHERTY: All right

25 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

1 This is directly at Willow Slough.

2 I'm sorry, not Willow Slough. Weir 2.

3 And finally we've had a new building that we
4 constructed. It was -- the old facility was small. We
5 couldn't have large meetings of the entire staff. And it
6 also has new facilities to control the weirs remotely and
7 the pump stations. Currently we have to manually operate
8 it and it's a big labor demand. By remotely operating it
9 from the yard, we won't have to send people out in the
10 middle of flood control -- flood fighting events.

11 And an emergency power generator for the yard.
12 We learned at the last windstorm that we could lose power
13 regionally.

14 --o0o--

15 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

16 Now, I'd like to talk about the modeling that was
17 done. And the first question we had to determine was,
18 what are we being -- what standards are we being held up
19 to to determine whether we're meeting our design flows in
20 Sutter Bypass?

21 And the O&M manual provides -- Tisdale Bypass to
22 Feather River, it cites 216,000, six feet of freeboard.
23 And that O&M manual is a guideline. We use the O&M
24 manuals as a guideline. However, the 1957 design profile
25 that the Corps did has a significantly less flow, 155,000,

1 with a freeboard that varies. And it's based on the
2 actual constructed elevations.

3 And a 1973 document, the Corps did a state of the
4 system report, and it also shows 155 above Tisdale Bypass
5 and 180,000 cubic feet per second below Tisdale Bypass and
6 five feet of freeboard.

7 So even though the O&M manual states a higher
8 value, you know, we think that most likely that the Corps
9 design profile is really what the capacity of the bypass
10 is. We've tried to ask people at the Corps and other
11 people in the community with some history as to, you know,
12 where did -- why this discrepancy, what officially did the
13 Corps do to change the capacity? And we haven't been able
14 to find it.

15 So we use both these figures. But, you know, I
16 think that the '57 design profile is a truer indication.
17 And I'll show you one of the reasons in the next slide.

18 --o0o--

19 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

20 This slide shows the east levee bypass. And the
21 line in red is what was currently surveyed. And the '57
22 design profile, which purportedly on the profile was the
23 as-constructed elevations, shows that the current
24 elevations are actually lower. So either we've had
25 subsidence or the as-constructed are not really as

1 constructed. And, you know, I don't know which one it is.
2 But it does show that the levees are lower than the design
3 profile.

4 We don't have that problem with the western
5 levee.

6 --o0o--

7 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

8 When we started modeling what predicted flows, we
9 used as our base condition the existing vegetation, which
10 we took as what was cleared in the old growth area this
11 year as well as what's planned for next year with the fish
12 and wildlife -- the Sacramento refuge and our plans for
13 clearing out the old duck club.

14 And the solid blue line is the calculated
15 elevation -- water surface elevation. And the triangles
16 are the '57 design profile. And it shows we're close. We
17 may not be there in all spots, but we're very close to it.

18 --o0o--

19 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: The
20 next one shows the flows with the '57 design profile with
21 existing elevation and -- with existing vegetation and a
22 six-foot freeboard if that's what we were trying to
23 maintain. And it shows in some areas -- let me back up.

24 This first one is the existing vegetation
25 compared to just the '57 design surface water level.

1 The next one we use the flows from the design
2 event, the design flows of 155,000 and existing water
3 level, and showed on top of that a six-foot freeboard.

4 --o0o--

5 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: And
6 then the next one is a slide showing the calculated water
7 surface elevation with the O&M flows, which were the
8 higher flows, with a six-foot freeboard. And that we
9 don't meet.

10 So, you know, from this we observed that, you
11 know, vegetation does play a role. And we looked at what
12 happens if we remove all the vegetation.

13 --o0o--

14 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: And
15 first we took the '57 design profile flows with complete
16 vegetation. And we did have six-foot freeboard.

17 --o0o--

18 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

19 Then we looked at the higher flows with the O&M
20 manual, removed all the vegetation. And in some areas we
21 were close but we did achieve it.

22 And, you know, what this told us is that, you
23 know, we definitely need to look at removing vegetation.
24 Now, we don't want to remove all of the vegetation,
25 because if we did, we'd have problems with erosion and

1 we'd need to rock the levees. In fact, the -- in the 1973
2 plan that the Corps did, they identified in the bypass as
3 rocking it. We think if we leave some vegetation along
4 the edges, that we don't need to have this six-foot
5 freeboard. We could probably get away with five feet,
6 because the tree line protects the levees.

7 --o0o--

8 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: So
9 what we're looking at doing is, in terms of vegetation
10 management, we've picked four areas that we want to focus
11 on. Starting at the north at Highway 20 by Long Bridge,
12 you can see these are photos from 2005, so they don't show
13 actually what's cleared. You can see -- the dashed black
14 lines are what we've done. So we've thinned areas in --
15 you can see where we've thinned Highway 20 at Long Bridge,
16 and we're doing annual mowing there and we're continuing
17 to keep after it.

18 In the old growth area on the east side of the
19 channel, we've already done thinning and clearing, that a
20 lot of the vegetation you see in that dashed line has
21 been -- when we say thin, we clear out the understory and
22 limb up the trees so enhance flow. And we are, as I said,
23 focusing this year and next year on the old growth area
24 and are trying to clear out the middle of the channel.

25 Around Gilsizer slough, we see that's an area -

1 that's the middle picture - that we want to again thin and
2 remove vegetation in the middle of the channel.

3 Similarly in Nelson Bend rock weir we've thinned
4 and cleared a significant area to the east, and we're
5 going to move to the center of the channel.

6 --o0o--

7 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: So,
8 in summary, our future efforts on vegetation control is in
9 the refuge and private lands associated with the old
10 growth area. At the northern bypass between the old
11 growth and Highway 20, we want to keep disking that and
12 keep growth down. We want to thin areas. And there are
13 certain areas I didn't show here that there is growth
14 extending from the vegetation along barrow canals into the
15 channel, and we want to start pushing that back.

16 Down by Nelson Bend rock weir, Nelson Slough we
17 want to remove and thin vegetation. And, again, I want to
18 highlight that it's a long-term process where once we go
19 in and remove and thin out an area, it adds to the work we
20 have to do in subsequent years and staying on top of it so
21 we don't lose ground.

22 And, you know, with that I'll take any questions.

23 Hopefully I didn't put you to sleep.

24 PRESIDENT CARTER: Questions for Mr. Lerner?

25 BOARD MEMBER RIE: Do the private property owners

1 in that area have any responsibility for maintaining or
2 clearing vegetation? Or does DWR take care of all of it?

3 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

4 Well, we try and work with them. There's
5 certain -- just like the duck club on the north end of the
6 old growth area is private. And they're letting us go in
7 and clear brush. And there are -- there are certain
8 landowners we work better with I think that predated my
9 time. But the Tarkey family worked with us to help clear
10 areas. So I can't say that they themselves do the work.
11 But we focus on the work, you know, that our crews do.

12 BOARD MEMBER RIE: Is there any vegetation that
13 was permitted by the state for restoration purposes where
14 the property owners aren't doing their share of the
15 maintenance?

16 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: I
17 don't know of any. There are no restoration projects that
18 I know of in the bypass.

19 SECRETARY DOHERTY: I might address that.

20 Do you remember when I said there were trees
21 being planted within the channel? That was just north of
22 the old growth where those trees --

23 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

24 That was the duck club.

25 SECRETARY DOHERTY: Yeah. And they planted trees

1 out there and put protectors around them.

2 BOARD MEMBER RIE: And is the duck club, you
3 know, doing their part, or is that pretty recent and no
4 maintenance is needed?

5 SECRETARY DOHERTY: They went out and did some.
6 Punched a hole in some old growths and did do some
7 cosmetic gardening, some backyard gardening. I've got
8 pictures that were taken Tuesday of the area. And I don't
9 know if you know how quickly the willows grow. But, you
10 know, they --

11 BOARD MEMBER RIE: Pretty quick.

12 SECRETARY DOHERTY: -- grow two feet a year. So
13 they cut some of them down at level of a ditch, because
14 they were extending across the channel. But we'll be
15 addressing that.

16 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER:

17 This top picture shows -- that's the duck club
18 that we're talking about. I think the area that you're
19 talking about is -- where they planted trees would be to
20 the left, which is to the east, and a little bit north.

21 PRESIDENT CARTER: Any other questions for Mr.
22 Lerner?

23 SECRETARY DOHERTY: What was your roughest
24 coefficient that you used?

25 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: It

1 varies. I mean I -- we have it in our report.

2 SECRETARY DOHERTY: Did you use like .03 for the
3 old grove area and --

4 DWR MAINTENANCE SUPPORT BRANCH CHIEF LERNER: On
5 the current vegetation --

6 MR. CHANG: It varies, depending on --

7 PRESIDENT CARTER: Could you -- I'm sorry. Could
8 you please introduce yourself for the record.

9 MR. CHANG: I'm sorry. My name's Joseph Chang
10 with the Flood Maintenance Office.

11 It varies throughout the channel. Looking at the
12 complete removal, we did use .03. But on the current
13 condition it's -- they're variable depending on where the
14 flow corridor was. There are numerous flow corridors that
15 we've been disking or have been maintaining. So there is
16 a change between those in the wildlife refuge area.

17 SECRETARY DOHERTY: Okay. Thank you.

18 PRESIDENT CARTER: Any other questions for Mr.
19 Lerner?

20 Okay. Thank you very much.

21 I have a number of cards here. And I'm not sure
22 whether people wanted to comment on DWR's presentation,
23 they want to comment on the subsequent item, Item 11.

24 SECRETARY DOHERTY: Subsequent --

25 PRESIDENT CARTER: Maybe I'll just run through

1 these quickly. If you want to make comments, great. If
2 you want to wait until the next item, just so indicate.

3 Mr. Teesdale.

4 I'm taking these in the order I received them and
5 not any --

6 MR. TEESDALE: That's on number 11.

7 PRESIDENT CARTER: Okay. We'll wait then.

8 Mr. Ellis.

9 MR. ELLIS: I'd wait.

10 PRESIDENT CARTER: Okay.

11 Ms. Sutton.

12 MS. SUTTON: Number 11, please.

13 PRESIDENT CARTER: Ms. Indrieri.

14 MS. INDRIERI: I'll wait, please.

15 PRESIDENT CARTER: And Ms. Peace.

16 MS. PEACE: I'll wait.

17 PRESIDENT CARTER: Okay. That's all I have.

18 Is there -- Mr. Countryman.

19 MR. COUNTRYMAN: I didn't turn a card in, but --

20 PRESIDENT CARTER: If you want just to go ahead
21 and approach the podium, please.

22 MR. COUNTRYMAN: My name is Joe Countryman. I'm
23 President of MBK Engineers and also the engineer for the
24 California Central Flood Control Association.

25 The modeling information that was presented was

1 interesting. But I think -- if we're trying to determine
2 the impacts of certain locations of vegetation, the
3 limitations of the one-dimensional model that's being used
4 are quite evident. With that type of modeling you have to
5 assume a certain roughness across the -- averaging across
6 the cross-sections, and then that averages between the
7 cross sections. And I believe the cross-sections are
8 something like - correct me if I'm wrong - but up to a
9 quarter mile apart. And it's pretty hard to get averaging
10 along those things that really work out.

11 Now, as the Board knows, in the Yolo Bypass when
12 questions came up about what can be done and what can't be
13 done without affecting the flood capacity, a 2D model was
14 put together and analyzed in detail. And I think if we
15 really want to come up with a comprehensive plan of
16 vegetation management for the Sutter Bypass, I really
17 believe that eventually we're going to have to have this
18 2D modeling so we can incrementally take a look at when
19 something's in and something comes out how it affects the
20 flow distribution in the channel.

21 I mean, it's -- the bypass is very wide and we're
22 assuming that a uniform water surface elevation from one
23 side of it to the other. It's not very likely.

24 So I would just offer that up, because the
25 modeling was presented here, that for consideration that,

1 you know, whatever's decided to do here, I do think we
2 need a better modeling tool than what we've had an
3 opportunity to put together yet on this.

4 PRESIDENT CARTER: And so you would suggest
5 two-dimensional modeling?

6 MR. COUNTRYMAN: Yes.

7 PRESIDENT CARTER: Okay. Any questions for Mr.
8 Countryman?

9 Thank you very much.

10 Did DWR want to comment on that or --

11 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

12 Keith Swanson, Chief of the Flood Maintenance
13 Office.

14 I think we're supportive of this. You know,
15 we're looking at this as ongoing adaptive management.
16 This is our first cut at trying to get a handle on where
17 we need to be. So we did this model. As we've been doing
18 the modeling, we've continued to do vegetation management
19 and I think Noel laid out our plans to continue that. And
20 we know that there are still areas that need to be
21 addressed. We know up and down the system we've got, you
22 know, years and years and years of deferred maintenance
23 that we're working through.

24 One of the reasons that we showed you all the
25 work that was going on in the area is because we're faced

1 with numerous public safety issues and we're moving
2 forward on a lot of different fronts. We have a lot of
3 different programs and a lot of different watersheds.

4 And so, yeah, we agree with that. And we'll work
5 forward on trying to develop, you know, a 2D model. But,
6 you know, nobody has done it yet. And so, you know, we're
7 starting from scratch on that. At least I don't know that
8 anybody did anything with that.

9 I know our original model I think started as a
10 Corps model, and I think MBK maybe used it. And then we
11 took it and we modified it, you know, some more. And so
12 these things evolved with time. And we'll have to evolve
13 into a 2D model.

14 And it's not just the Sutter Bypass. It's other
15 areas that we'll probably need that level of modeling to
16 really understand what we're doing. But in the interim
17 we're not going to stop our maintenance.

18 Thanks.

19 PRESIDENT CARTER: Thank you.

20 Questions?

21 Okay. Very good. Thank you.

22 Let's go ahead and launch into Item 11 at this
23 point. This is a Sutter Bypass presentation by
24 representatives of the Sacramento River West Side Levee
25 District, RD 1500, 70 and 1660.

1 Thank you for your patience, Mr. Bair. Sorry
2 we're so far behind.

3 MR. BAIR: No problem.

4 Both Max Sakato and Ron Long, who represent the
5 other three districts, apologize for not being able to be
6 here, but they had other commitments that they couldn't
7 get out of. So I certainly can't represent all of us, but
8 I'll do my best.

9 So thanks for the opportunity President Carter,
10 members of the Board and Manager Punia for your help so
11 far.

12 And I have a short presentation that I'd like to
13 give to give us a little bit of background. And I have to
14 say I'm encouraged by Mr. Lerner's report. And I think,
15 you know, Mr. Swanson's follow-up I think --

16 PRESIDENT CARTER: Mr. Bair, just for the record,
17 could you introduce yourself.

18 MR. BAIR: Oh, sorry.

19 Lewis Bair. I'm the General Manager of Sac River
20 West Side Levee District.

21 PRESIDENT CARTER: Thank you.

22 (Thereupon an overhead presentation was

23 Presented as follows.)

24 MR. BAIR: So my purpose here today is to have
25 the Central Valley Flood Protection Board adopt an action

1 plan to monitor and address unauthorized encroachments
2 within the Sutter Bypass floodway. And that's really how
3 I view what we're going to talk about today. I thought it
4 was interesting that you had the deliberation earlier
5 about a -- you know, a fence across the levee, which, you
6 know, to me it certainly could have been an issue of an
7 encroachment. What we're going to talk about today is,
8 you know, some areas that have 30-acre forests in the
9 middle of the floodway. And so to me it's a bigger issue,
10 and it's probably because it's my backyard as opposed to
11 the individual earlier.

12 --o0o--

13 MR. BAIR: I just want to touch -- this is
14 certainly not the first time we've been here before you.
15 But I think this was really kicked off when there was a
16 flood in 1997, flooded over 20,000 acres, homes,
17 businesses, some industry in the area, and almost flooded
18 the Town of Meridian if not for I think, you know, in many
19 respects the Department of Water Resources flood fighting
20 teams. And of course, if you remember, Al Gore came up
21 and helped. So --

22 (Laughter.)

23 MR. BAIR: There were a -- we've had over a dozen
24 tours of the Sutter Bypass, which it included -- you know,
25 everybody has been out there I think - federal and state

1 legislators, the Department, many of the local folks.
2 We've been out and trying to show folks the issue that's
3 out there, what's going on in the Sutter Bypass. And I
4 think you've seen that the Department is starting to
5 address some of that deferred maintenance. And so today
6 we'd like to support that and encourage them to go a
7 little bit further.

8 I've also given a couple presentations here to
9 the Board. We've sent a couple of letters. The most
10 recent letter on August 14th I think has helped prompt
11 this presentation today and potentially some action.

12 We have also worked directly with the Fish and
13 Wildlife Service in the Sutter Bypass. They are currently
14 undertaking a long-term management plan which is called
15 their comprehensive conservation plan, which I think is
16 interesting. It talks about a long-term plan for
17 vegetation within the bypass that's not permitted under
18 their current easements. But, you now, I'm quite sure
19 there's not an encroachment permit for that with you guys.
20 So it's clearly an action they're taking now, in my mind,
21 and something that this Board should be at least
22 deliberating on and considering taking actions to give
23 them input.

24 --o0o--

25 MR. BAIR: So this is a 2008 aerial photograph.

1 This is Google Earth, a pretty amazing resource today.
2 But the basin -- and I apologize. I was going to use a
3 laser pointer, which won't help you guys up there. But
4 the basin to the west of the bypass where you can see the
5 two pins and to the north -- so the basin that you have
6 here is the basin west of the bypass, north of Tisdale,
7 flooded in 1997. And it filled up -- this is the low
8 end -- it filled up to the point where it almost flooded
9 the Town of meridian up here.

10 The levee failure in 1997 occurred right here,
11 which is immediately upstream of the old growth area that
12 you heard Noel -- Mr. Lerner speak about.

13 --oOo--

14 MR. BAIR: This is a 2008 photograph of the old
15 growth area again. Here is the location of the break.
16 Here is the old growth area. It's about 30 acres. And I
17 think we agree with Noel. We think there's some real
18 service that comes out of the vegetation along the barrow
19 site. We're just very concerned about the old growth
20 area. It protrudes, you know, over 40 percent of the way
21 into the bypass, and I think you'll see with the surveys
22 that were done in the '97 flood has a significant impact
23 on the flood water surface elevations in this stretch of
24 the bypass.

25 A Couple things that I can point out here I think

1 that might help. Lady Bug -- or Ms. Doherty had a couple
2 of questions about the photos in Noel's presentation.
3 Those are actually this group of trees right here. I
4 think it also gives you an idea of the magnitude of this
5 section over here on the west side. But these were the
6 trees that were trimmed up. This is the private duck club
7 up here. And then where you saw the shredders I believe
8 was just in this area right here.

9 --o0o--

10 MR. BAIR: This is a photo to describe the
11 density of the area that's in the old growth. This is the
12 understory that right now is -- that both the Department
13 of Water Resources and the refuge staff are going through
14 here with shredders and chopping out this. However, the
15 Sutter plan -- the Sutter Wildlife Refuge long-term
16 conservation plan, the intent is to keep the -- largely
17 keep the forest, the larger trees and 20 or 30 percent of
18 the smaller trees, so that that riparian area would always
19 be there 40 percent of the bypass.

20 I think this is our major concern. And I think
21 you heard Mr. Lerner saying that it's much more expensive
22 to maintain that way. I think of it as, you know, you're
23 almost landscaping as opposed to clearing.

24 --o0o--

25 MR. BAIR: So this is a survey that Sutter County

1 produced immediately following the flood in 1997. And I
2 think a couple of things are important to point out here.

3 There's three horizontal lines. This top line is
4 the top of levee - and this is the west levee, which Noel
5 mentioned is higher than the east levee. So this is the
6 west levee. This top elevation is -- often times when
7 there's a failure they'll do an apparent high water line
8 survey. We did this with DWR in our section of levee on
9 the Sacramento River. Well, this is what was done
10 following the flood.

11 What is especially important is this upper area
12 right here, this area is the beginning of the Sutter
13 Wildlife Refuge, this vertical line. So this is exactly
14 where the old growth area is. The water surface slope in
15 this reach here is roughly ten feet per mile. The average
16 channel slope throughout this area is one-twentieth of
17 that. So you have 20 times the slope in this section
18 here, which -- I mean it's almost something you'd call as
19 a water engineer a hydraulic jump. It's a substantial
20 change in water surface elevation. And I don't believe
21 the amount of effort that's happened to this date would
22 have mellowed out this jump enough to represent what was
23 in the modeling effort that just came out.

24 I also think it's important to point out here
25 that the difference between this upstream line, which is

1 where the break occurred, and the elevation of the west
2 levee is less than the six feet. In fact, it's about four
3 feet. So you've encroached on the Corps standards by two
4 feet, depending on the specifics. There showed some
5 variation in there. I wasn't aware that there was any
6 variations on that. But it's about four feet, needless to
7 say, which is less than all of the margins that were shown
8 on Mr. Lerner's table.

9 --o0o--

10 MR. BAIR: This is the language of the flowage
11 easements. I thought it was important to point out,
12 because in this language it talks about the management of
13 property which would create obstructions. I think right
14 now the Sutter Wildlife Refuge clearly has a very well
15 developed and public document that talks about managing
16 their property in a way that would obstruct flows. This
17 gives the Sacramento-San Joaquin Drainage District and its
18 successors and heirs the authority to go in and remove
19 that and eventually even take the property from folks if
20 they're not willing to compensate the Department for doing
21 that.

22 --o0o--

23 MR. BAIR: This is the -- I wanted to give a
24 couple other examples. For the most part, the Sutter
25 Bypass is very open, very clear. A lot of it is farmed.

1 You can see the farmed area in the downstream end of this
2 photograph. The west here is the Tisdale Bypass. The
3 line that goes across the bypass here is the southern end
4 of the Sutter Wildlife Refuge. I think it's important to
5 point this out, because it -- to me it says that the
6 Department needs to have a little closer eye on the
7 activities here in the wildlife refuge because their
8 management practices are illustrating that they're
9 creating some additional potential hydraulic impacts.
10 There's a large grove that's starting down here. This is
11 about 10 or 15 acres, about half the size of the grove
12 that's the old grove area in the northwest portion of the
13 district.

14 I don't believe this was in -- or shown. I
15 didn't see any hydraulic impact from the Department's
16 one-line model down there.

17 --o0o--

18 MR. BAIR: This is another location again. It's
19 where the Feather River comes in from the east. But you
20 can see that there's a large forest here that comes in
21 from the east side and comes across the bypass. And it's
22 sites like these that I think will be really important to
23 take a look at in a two-dimensional model and figure out
24 if they are having an impact and, you know, what can you
25 allow to grow over here? Right now we're kind of making

1 these decisions blindly. I say "we." I guess you're
2 making those decisions without the aid of a model that
3 could tell you whether or not that was an acceptable land
4 management practice.

5 --o0o--

6 MR. BAIR: So today we're requesting some
7 actions. First of all, we think it's very important that
8 all landowners in the bypass understand the easement --
9 the language, detailed language of that easement that's on
10 their property. President of my board just recently
11 purchased some -- well, not very recently, but fairly
12 recently purchased some land in a floodway. And he's very
13 in tune with flowage easements and flood issues. And his
14 title process gave him no detail of the flowage easements.
15 It simply listed the fact that there is, you know, a
16 flowage easement in favor of the Sacramento-San Joaquin
17 Drainage District. And he had to go through some
18 elaborate process if he ever wanted to find that language.

19 I present to you that if my board president
20 didn't do that, and he's in tune with flood, nobody else
21 is doing that. And most of these landowners, they're
22 managing their property without the knowledge of that. So
23 I think it's very important that we let them know that
24 that's out there. I think it will also help your staff
25 when they have to go out and take action, take activities,

1 you know, bring in the chopper, those folks will be aware
2 of that. Yeah, I think it will provide you guys some ease
3 to your staff.

4 Also, I think that there is a different standard
5 being applied to the Sutter Bypass than the Yolo Bypass.
6 And I think a really good example of that is the fact that
7 the Vic Fazio Wildlife Refuge had a very elaborate process
8 developed for that. In fact, there's an MOU that's been
9 developed that has very specific directions for how
10 they're to manage their property. There's no such thing
11 for that in the Sutter Bypass. And despite for three
12 years we've been raising that, I don't know that this
13 Board made substantive comments to the Sutter Wildlife
14 Refuge Comprehensive Conservation Plan. And I think
15 that's something that really needs to be stepped up. It's
16 something that I feel that you owe the locals and is part
17 of your job.

18 And then as part of that, I'd like to see a
19 two-dimensional model that's developed that's sufficient
20 for you guys to be able to actively manage areas like the
21 Sutter Wildlife Refuge and other areas that I've shown and
22 I think that Noel has illustrated for you as well.

23 So that's all I have. If there are any
24 questions, I'd be happy to answer those.

25 PRESIDENT CARTER: Any questions for Mr. Bair?

1 BOARD MEMBER SUAREZ: I have a quick one.

2 The slide you had, that easement language I guess
3 it was.

4 MR. BAIR: Yes.

5 BOARD MEMBER SUAREZ: And this appears where?

6 MR. BAIR: This is an easement -- there's
7 language like this, not exactly the same but just like
8 this for every parcel that's within the floodway. So when
9 the Sutter Bypass was originally constructed, they had to
10 obtain easements. The Sacramento-San Joaquin Drainage
11 District was the beneficiary of those easements, so that
12 they could construct that bypass and have the right to go
13 in and maintain it. So there's similar language like this
14 for every parcel out there.

15 BOARD MEMBER SUAREZ: And is it your suggestion
16 that we enforce this easement against -- who is it, the
17 federal government?

18 MR. BAIR: Well, I'm not -- I think these
19 easements give you the right to go out and to maintain the
20 bypass as it needs to be done. I mean they're very broad
21 in authority, and I think that does apply to the federal
22 wildlife refuge just as it does to private landowners. In
23 fact, we had our attorney, George Basye, which I'm sure
24 many of you are familiar with, look into that fact. And
25 when that land was condemned, it was condemned subject to

1 those easements.

2 BOARD MEMBER SUAREZ: Do we -- counsel, perhaps.
3 Do we know whether that's the case, whether we actually
4 have authority to enforce this language against the
5 federal government?

6 LEGAL COUNSEL CAHILL: No, I actually haven't
7 been provided with this easement language and haven't
8 looked into it.

9 SECRETARY DOHERTY: I do have it. But he
10 recently confirmed that the federally owned Sutter --
11 wildlife refuge lands in the Sutter Bypass are subject to
12 the state-held flood easements. And I do have a copy in
13 my binder over here. When they acquired the wildlife
14 area, it was with those easements.

15 BOARD MEMBER SUAREZ: Well, I understand that
16 would be one argument. And I was wondering whether the
17 federal government could make the counter-argument or
18 whether we can actually enforce an easement against a
19 sovereign entity.

20 BOARD MEMBER RIE: I think it's a prior rights
21 issue. Don't we have prior rights?

22 SECRETARY DOHERTY: Um-hmm.

23 MR. BAIR: That was the question that we were
24 asking George, is "George, do these apply to the Sutter
25 Wildlife Refuge?" Because they're a federal government

1 entity.

2 BOARD MEMBER SUAREZ: I understand what your
3 lawyer gave you.

4 MR. BAIR: Yeah, all right.

5 And all of this language, this was supplied by
6 you guys. You guys hold all these easements, and provided
7 them for us.

8 BOARD MEMBER RIE: Do we know if there's recorded
9 easements against every parcel? We have verification of
10 that?

11 SECRETARY DOHERTY: Yes. Two years ago I checked
12 with Dan Fua. And so he went back and researched it for
13 me and gave me copies of those easements and the records
14 and page and chapter and verse.

15 BOARD MEMBER RIE: Are they all the same?

16 SECRETARY DOHERTY: I'd have to check word for
17 word. I'm not positive. But, yes, the rights are there
18 for us to go in and clean out. And I thought it said we
19 could bill them. But on one of them it didn't say we
20 could bill them for the work that we had to do.

21 The Department of Fish and Game -- Fish and
22 Wildlife is aware of it. I have a copy of a memo from
23 them.

24 I'd like to remind everyone that the agreement
25 between the Department of Fish and Game and Department of

1 Water Resources is for routine maintenance -- as an
2 activity occurring every one to two years. When DWR
3 proposes an activity that is not routine and/or is a
4 significant removal in a wildlife habitat, it should
5 automatically assume that there will be increased
6 scrutiny.

7 DWR will be best served by submitting the
8 material necessary to fully explain the problem and the
9 proposed solution. Proposing site visits are all very
10 fine but the proposed activity must still be documented.
11 So they are aware of the right.

12 PRESIDENT CARTER: Who wrote that and who was the
13 recipient?

14 SECRETARY DOHERTY: Do I need to tell you?

15 It was to Gary Hobgood from Steve Beckley, with
16 carbon copies to Joel Free and Karen Hull and Keith
17 Swanson. And the reason I have them is because they are
18 trying desperately to do maintenance and they feel
19 stymied. We on the one hand wanted to do it and then Fish
20 and Wildlife on the other hand are telling them no.

21 BOARD MEMBER SUAREZ: But that document
22 references an agreement. What agreement is that? The
23 document you just read references an agreement.

24 SECRETARY DOHERTY: Oh, to their -- to the deeds.

25 BOARD MEMBER SUAREZ: Do you know that for a fact

1 that the agreement they're referencing to --

2 SECRETARY DOHERTY: Yeah, yeah, yeah.

3 BOARD MEMBER RIE: Could you explain again what
4 the issue is. I mean we obviously have easements. And
5 I'm assuming we have prior rights.

6 Are we -- is DWR being prevented from clearing
7 the old forest? What's the issue?

8 MR. BAIR: My issue is that we had a flood in '97
9 and we don't feel like it's -- we believe what the survey
10 clearly showed that there was problem with vegetation.
11 And it's for many reasons I think, budgetary and others,
12 it hasn't been cleaned up. The enforcement of the
13 easements haven't occurred.

14 I think there's also in some of the tours that
15 we've been out there, the Department staff maybe aren't
16 certain that they have right to go out on the Fish and
17 Wildlife -- or, I'm sorry -- the wildlife refuge's
18 property. They're uncomfortable with it, to say the
19 least. So I think they could use some reassurance that,
20 "Hey, you do have this right," you know, you guys
21 internally clarify that and go out there. It's almost a
22 permission to go out and do these activities as opposed to
23 operating from a condition where you have the right to go
24 out and do those and you're going to notify.

25 BOARD MEMBER RIE: So what you're asking us to do

1 is to write a letter to Fish and Wildlife informing them
2 that we do have prior rights and we'd like to come in and
3 clear some of the vegetation out?

4 MR. BAIR: I think what I'm asking you to do is
5 to maintain the bypass as you're charged to do, which in
6 my mind includes a lot of different things. It includes
7 being able to look at the bypass with a model or with a
8 tool and decide what needs to be done and then to carry
9 that out.

10 BOARD MEMBER RIE: Okay.

11 PRESIDENT CARTER: Go ahead.

12 VICE-PRESIDENT HODGKINS: Lewis, what do you
13 think constitutes maintaining it to the standard that
14 we -- I mean what would we measure that you would be
15 willing to accept and say, "Yeah, if it does that, it's
16 fine"?

17 MR. BAIR: You know, I think -- the hydraulic
18 jump that I see from that vegetation is unacceptable, you
19 know. And I think that was proven by the fact that, you
20 know, you had a levee failure in that location. You know,
21 you're asking me should it be six foot of freeboard,
22 should it be the O&M manual, or am I going to ask for
23 something above that, is that what you're asking me?

24 VICE-PRESIDENT HODGKINS: In effect that's what I
25 was asking, yeah.

1 MR. BAIR: Yeah, I mean I think it's -- what
2 we've asked for in the language is to the Corps's
3 standard. I don't know what that exactly is. I know
4 right now it's not good enough. We've got problems out
5 there. I feel like we're so far from that line, that
6 we've got to start taking a lot of steps in the right
7 direction before we can tell what that bright line is.

8 VICE-PRESIDENT HODGKINS: Okay.

9 MR. BAIR: I mean I'm not asking you guys to do
10 anything I think that's over and beyond what your
11 authority to do is or what your obligation to do is. I
12 just think that it's not happening right now.

13 VICE-PRESIDENT HODGKINS: Well, my question I
14 think is still a good question and something we should
15 know the answer to even if you don't think you do.

16 MR. BAIR: Yeah, I think Noel has some question
17 with that too in his presentation. You know, is it the
18 '57 plan and profile, is it the Corps's plus six feet? I
19 mean if he's done the literature search and can't find it,
20 I -- you know, I'm agreeable to whatever that standard is.
21 If we find that we can't meet -- as you know, if we can't
22 meet the '57 plan and profile without failing levees, I
23 think we need some levee improvements. But I think that's
24 the standard that we've got to get to.

25 VICE-PRESIDENT HODGKINS: Okay.

1 BOARD MEMBER RIE: Another question?

2 PRESIDENT CARTER: Go ahead.

3 BOARD MEMBER RIE: You said earlier that in the
4 old growth forest the plan was to leave the large trees
5 intact and cut down the undergrowth. Why do we want to
6 leave the large trees intact?

7 MR. BAIR: That's why I think -- that is the
8 Sutter Wildlife Refuge's -- the Fish and Wildlife
9 service's current plan is to leave those trees intact. I
10 think you guys need to talk to them. And I think we just
11 need to have the trees along the edge along the barrow
12 pits. So I think the other trees need to be removed
13 completely. I think it's the only way that you'll from
14 year-in and year-out be able to perform your maintenance.
15 I think it's the only way you'll reduce the impact on the
16 flow through the bypass. But what I'm I guess trying to
17 raise that issue is I don't want to leave those trees
18 intact. I'd like to see it pulled back like the rest of
19 the bypass.

20 BOARD MEMBER RIE: Is there endangered species in
21 those trees?

22 MR. BAIR: I have heard them mention that the
23 Yellow-billed Cuckoo, which is not a threatened species --
24 it's a species of interest to the state. I'm not aware of
25 anything in there that would prevent us from doing our

1 work. Although I'm sure that would be a strategy. If
2 they got their feathers ruffled, they would try to find
3 something to prevent that work.

4 But right now, I mean I don't want to -- you
5 know, I don't want to suggest that Fish and Wildlife
6 Service isn't willing to cooperate. You've seen, they've
7 gone through -- they've spent quite a bit of money.
8 They've shifted money around from other refuges to go in
9 there and take out that understory. I just don't believe
10 that that can be managed that way. And even if it can --
11 take my belief out of it -- you guys should be the ones
12 looking at it and permitting that sort of activity as
13 opposed to them doing it and me coming in and arguing with
14 you about it. It should have a memorandum of
15 understanding or some sort of permit for them to manage
16 their property that way. It's in the middle of the
17 bypass.

18 BOARD MEMBER RIE: You know, you're being very
19 nice and very polite. I'm just wondering, has anybody
20 asked the question, can we just cut the trees down?

21 MR. BAIR: Yes.

22 BOARD MEMBER RIE: And what was the answer?

23 MR BAIR: "This is our plan" -- their plan, the
24 conservation plan. I don't know if the State's asked to
25 remove those trees or not. But I told Kevin Forester that

1 we would like them to remove all trees except for the ones
2 along the barrow pit. He said that "I think we're doing
3 enough." So he thought that, you know, removing the
4 understory and some of the smaller trees -- they're
5 talking about removing some of the smaller trees -- they
6 thought that was enough.

7 So I think, you know, a good approach might be to
8 ask them, "Okay, if you think it's enough, well, then you
9 produce the two-dimensional model that proves that you
10 don't inhibit flows." I mean isn't the normal -- I just
11 put in a fish screen in a floodway and I had to do a model
12 and prove to you guys that I didn't have an impact. Isn't
13 that the same thing?

14 BOARD MEMBER RIE: I think we ought to just ask
15 them if it'd be okay to cut down the trees.

16 PRESIDENT CARTER: Let's hear from some members
17 of the public.

18 Thank you very much, Mr. Bair.

19 Mr. Teesdale.

20 Is there any particular order that you all wanted
21 to go in?

22 MR. ELLIS: Fran Peace has an obligation, and it
23 would be nice if she could have the opportunity to speak
24 with you. She's late for her next appointment.

25 PRESIDENT CARTER: Okay. Mr. Teesdale, do you

1 mind yielding to Ms. Peace?

2 MR. TEESDALE: No, go ahead.

3 PRESIDENT CARTER: Good afternoon. Welcome.

4 MS. PEACE: Good afternoon. Thank you very much
5 for taking me out of order.

6 Mr. Carter, members of the Board. My name is
7 Fran Peace and I'm the District Director for Congressman
8 Wally Herger, who represents the 2nd District, which
9 encompasses this area that we're talking about this
10 afternoon.

11 The Congressman is passionate about a few issues.
12 Issues dealing with public health and safety are at the
13 top of that list. Flood control and the protection of
14 life and property is paramount for my boss.

15 Today in representing Congressman Herger I come
16 to offer his full support of a resolution that I believe
17 you have before you this afternoon that will be brought up
18 later in the agenda, I believe.

19 Four reclamation districts in the Congressman's
20 district are charged with the responsibility of
21 maintaining and operating 136 miles of levees adjacent to
22 or directly affected by the performance of the Sutter
23 Bypass. This partnership is responsible for protecting
24 over 200,000 acres of highly productive agricultural land
25 and the residents and communities of Colusa, Meridian,

1 Grimes, Robins, and Knights Landing.

2 Mr. Herger has been working with the locals and
3 our state and federal agencies to make sure that
4 obligations are met in order to protect this fragile area
5 from high water devastation. Since the last major high
6 water event in 1997, Mr. Herger has personally visited and
7 witnessed the lack of maintenance in the Sutter Bypass.
8 Overgrown vegetation is apparent, and not enough action is
9 being taken to address this serious problem.

10 In addition to state statutory requirements, our
11 federal partners, the U.S. Army Corps of Engineers, also
12 has requirements that must be met. 33 CFR Section 208-10
13 addresses local flood protection works, maintenance, and
14 operation of structure and facilities. Specific
15 guidelines exist to make certain flood protection works
16 are clear of encroachment, which includes the removal of
17 wild growth and drift deposits. The section in the code
18 is very explicit and addresses in detail the requirements
19 for efficient functioning of protective works.

20 Mr. Herger is continuing to work with the U.S.
21 Fish and Wildlife Service in making certain adequate
22 preventive measures be taken to prevent flooding. Today
23 having your support of this resolution would move us one
24 step closer and making sure all state and federal agencies
25 work together to prevent costly and devastating floods and

1 one that can be avoided by routine maintenance of the
2 Sutter Bypass.

3 Thanks very much.

4 PRESIDENT CARTER: Thank you.

5 Questions for Ms. Peace?

6 SECRETARY DOHERTY: Thank you.

7 BOARD MEMBER SUAREZ: I have a question.

8 Hi. Good seeing you.

9 I was wondering. You mentioned that the
10 Congressman's been in touch with the Interior Department
11 regarding this issue. Could you elaborate exactly what
12 kind of communications and what kind of response he's had.

13 MS. PEACE: He has contacted the U.S. Fish and
14 Wildlife Service. We were working with then the director
15 of this region, Steve Thompson, and his associates. Steve
16 has since retired. We have not met the new director. But
17 I know that Kevin Forester has been deeply involved.

18 We are aware of the comprehensive plan that
19 they're working on, but that's a long-term plan and it
20 doesn't address the immediate needs of this new winter
21 that's coming along.

22 So we have been in touch with Interior. We also
23 are working with the Corps of Engineers. And that's how
24 we've been able to pull out this 33 CFR 208-10, which
25 might address the previous Board's concerns of what

1 authority you might have. I didn't bring the regulations
2 with me, but I'm happy to provide it to you for further
3 reference.

4 BOARD MEMBER SUAREZ: I appreciate that. And I'm
5 glad to hear the Congressman is involved, because here we
6 have a classic conflict in the federal government that
7 you're asking us to resolve. And if the federal
8 government can't get its act together, it's kind of hard
9 to be the ones pushing it from here.

10 But I'm glad to hear the Congressman recognizes
11 it and is working on it.

12 MS. PEACE: Right. The Corps of Engineers
13 actually provides the authority which should allow -- and
14 I'm not sure why it doesn't and why the DWR doesn't use
15 that authority to go in and clear the channel, clear the
16 bypass, even with Fish and Wildlife's objection if there
17 are endangered species or threatening species or birds of
18 interest. The Corps is pretty explicit in their authority
19 to provide that to the DWR.

20 BOARD MEMBER SUAREZ: I would imagine DWR would
21 do it if they got the funding and to mitigate for that.
22 Is the federal government prepared to then pass funding to
23 the state to mitigate for this? The environmental
24 mitigation would have to take place.

25 MS. PEACE: Well, the federal government should

1 be working with the state agencies. If there are
2 challenges that the DWR has in meeting their obligation,
3 members of Congress need to know that in their budgets.
4 They need to be -- Fish and Wildlife needs to be
5 contacting us or working through their own internal
6 processes to provide adequate funding in order to help DWR
7 live up to its obligations to keep the channel free.

8 So it's got to be a partnership between all state
9 and federal agencies

10 PRESIDENT CARTER: Thank you very much.

11 MS. PEACE: You're welcome.

12 PRESIDENT CARTER: Ladies and gentlemen, can we
13 take a ten-minute recess, please.

14 So we'll continue this item at 3:30.

15 (Thereupon a recess was taken.)

16 PRESIDENT CARTER: Okay. Ladies and gentlemen,
17 we were on Item 11, listening to public comment.

18 Mr. Teesdale, please.

19 Good afternoon. Welcome back.

20 MR. TEESDALE: Good afternoon.

21 Thank you, President Carter. I'm Tom Teesdale
22 from Meridian. I was here last month. You didn't have a
23 full board, so you'll probably hear some of this repeated.

24 I've been in two floods in my 80 years. In '55
25 we lived a mile and a quarter from the Yuba City flood.

1 Seven of us left home and only four of us come out alive.

2 I'm the last one.

3 In '97 -- I live on the Sacramento River south of
4 Meridian. It broke five miles on the bypass. We proved
5 that the water was two-foot higher above the Sutter
6 Refuge. And where you're talking about the old grove
7 trees by the duck club, then it was south. And what gets
8 me is the bypass -- and here is a picture before the
9 bypass was ever put in.

10 SECRETARY DOHERTY: What year was that, Tom?

11 MR. TEESDALE: 1916. It's April 18th, 1916. It
12 was taken from the Buttes looking south.

13 The bypass bridge wasn't built till '39 on
14 Highway 20.

15 BOARD MEMBER BROWN: Okay. Thank you.

16 MR. TEESDALE: Ma'am, you were asking about what
17 right this Board had or the -- the deed, January 6th,
18 1914, says the bypass was built for flood control only.
19 No obstructions of any kind, timber, brush, undergrowth,
20 weeds, tules, other obstructions of any kind, whether
21 natural or artificial, which would interfere with free
22 flow of water through said bypass. That gives you the
23 right right there for the property owners, the U.S. Fish
24 and Game, at the Sutter Bypass.

25 Kevin, the manager -- I was at a meeting in Yuba

1 City. And he said, well, he'd have -- they thinned out
2 some of the trees. And I told him -- I said the row of
3 trees you got there. He says they just grew. I majored
4 in horticulture in 1947 at Davis. And the only way trees
5 grow in a straight line is somebody planted them. And he
6 said he would take volunteers. I says, "Can I bring my
7 bulldozer over there and we'll take them out?" "Oh, no,
8 you can't do that." This Board has the right to tell the
9 people that.

10 And what I don't understand about government
11 today -- and I spent -- I wear a flag every day, I spent
12 four years in the war, three of them out of this
13 country -- is people in government today don't follow --
14 the rules are different for them than they are for
15 everybody else.

16 And in closing, since when is a garter snake more
17 valuable than a human life?

18 Thank you.

19 PRESIDENT CARTER: Thank you.

20 Ms. Sutton.

21 MS. SUTTON: Good afternoon. And thank you,
22 President Carter and members of the Board. My name is Sue
23 Sutton. I'm a resident of Colusa County.

24 I'd like to thank you for this opportunity to
25 speak before you and bring this issue to discussion that's

1 so important for everyone here in the north state.

2 As a Colusa County resident, my family has lived
3 in the area for four generations and we have seen the
4 beauty and the bounty that this valley can give us. We've
5 also seen the wrath and the power that mother nature has
6 bestowed upon this productive land.

7 As you know, it was not always so productive.
8 Our forefathers fought to reclaim the land, as noted in
9 the book, Battling the Inland Sea. Many lives were lost,
10 properties destroyed, and domestic animals and wildlife
11 suffered not only loss of life but also loss of habitat.

12 What is of particular interest to me was the fact
13 that the politicians at the time and other distinguished
14 learned leaders brought the so-called experts in to
15 resolve the flooding issues. These so-called experts
16 implemented their recommendations, only to find that they
17 did not work. In the end, it was the local people who
18 lived on the land, who experienced the day-to-day natural
19 events, that solved the issues of flooding in this great
20 Sacramento basin.

21 It was Willis S. Green, a local Colusa resident,
22 who was a surveyor and an editor of a local paper that in
23 the end designed the system that's working today.

24 I would like to emphasize that he was a local
25 resident, a man who observed from year to year all the

1 seasons and the related weather and the aftermath. It was
2 through his observations and surveys that the current
3 flood control system was designed.

4 Today, as you're hearing, local people are once
5 again stepping forward to share their insightful
6 observations and requesting your action to maintain the
7 system that has worked for us for approximately a hundred
8 years. As in the past, today we often rely on experts,
9 but it is the local people who can give you the best
10 guidance and advice regarding the flood issues, as they
11 have lived their for decades.

12 As you know, the Sacramento River is unique in
13 it's flood-flow volatility in relation to other rivers
14 around the nation. In 1916 House Report No. 616 on flood
15 control of the Sacramento River, a comparison was made of
16 the magnitude of maximum flood discharge in drainage areas
17 in square miles. According to this chart, the maximum cfs
18 per drainage area on the great Mississippi was 1.6 cfs per
19 square mile. Compare this to the Sacramento River, which
20 has 23 cfs per square mile.

21 The net-net is that the Sacramento River is
22 indeed approximately ten times more volatile in its
23 drainage flows than the Mississippi River.

24 This report clearly identified the need to
25 provide a system for flood discharges that can sustain the

1 flood waters for long periods of time. Over the past 100
2 years, we have seen devastating floods in the Sacramento
3 Valley. Record floods occurred in 1951, 1956, 1964, 1986
4 and 1997. We can surely expect record floods in the
5 future.

6 Thus, because of this history, it's imperative
7 that we maintain our carrying capacity of our current
8 flood control system. The old timers knew the importance
9 of maintaining the system and developed flood easements,
10 which is part of the discussion today, that were
11 transferred from land as properties were bought and sold.
12 These flowage easements are still in place today and are
13 the vehicle that gives the Central Valley Flood Protection
14 Board the authority to maintain the bypasses. According
15 to an Email dated September 22nd, 2005, from Jeff Fong,
16 Associate Land Agent, Department of Water Resources, to
17 George Basye, The Reclamation Board holds easements within
18 the Sutter Bypass portion of the National Wildlife Refuge.
19 The Board in the name of the Sacramento-San Joaquin
20 Drainage Districts, acquired these flowage easements prior
21 to the establishment of the Sutter National Wildlife
22 Refuge in 1945. The Board easements were acquired in
23 1918, 1919, 1941 and 1944. In 1945, according official
24 records of Sutter County, the Court recognized the need
25 for passage of flood waters through Sacramento Flood

1 Control Project by reserving an easement to you for
2 flowage clearing.

3 Thus, the refuge, when it was purchased, the
4 property rights in the Sutter bypass, also by acquisition,
5 agreed to the flowage easements as a condition of sale.
6 These easements were to ensure public safety. As you are
7 aware, the flowage easements are very specific regarding
8 their legal activities that can be conducted under the
9 easements. And I have all of them here. But in the case
10 of time, I'll just read a few of the things that you can
11 legally do:

12 Clear any or all timber, brush, growth,
13 undergrowth, weeds, tules, or other obstructions of any
14 kind, and every kind, whether natural or artificial, which
15 will or may interfere with the free flow of water through
16 the said bypass and may level off or grade said land from
17 time to time in such a manner that such places - blah,
18 blah, blah - retain, unpromote the free flow of water
19 through the bypass.

20 Therefore, it is within the authority and
21 subsequently the responsibility of the Central Valley
22 Flood Protection Board to maintain the bypass system, no
23 matter who holds the legal title. This authority is found
24 not only in the mission statement but also under
25 California Code of Regulation Title 23.

1 The Central Valley Flood Protection Board mission
2 states, in concise language, to control flooding, to
3 cooperate with various agencies, and to maintain the
4 integrity of the existing flood control system and
5 designated floodways.

6 In addition to these documents, operation and
7 maintenance standards are clearly defined in the May 1955
8 Standard of Operation and Maintenance Manual for the
9 Sacramento River Flood Control Project, written by the
10 Corps of Engineers' Sacramento District. Section 6 on
11 channels not only gives a clear definition of what
12 constitutes a flood control channel but provides an
13 itemized list of standard conditions of a well maintained
14 channel. These O&M manuals are noted in standards
15 established by the U.S. Army Corps of Engineers, Title 33,
16 Navigation and Navigable Waters, Chapter 2, Part
17 208.10.

18 All of these standards call for the removal of
19 debris, weeds, wild growth, or any other obstructions that
20 so may -- that may block the floodways so they are not
21 restricted.

22 I believe these documents give the authority and
23 the responsibility that the Central Valley Flood
24 Protection Board requires to operate and maintain the
25 flood control system.

1 Once again, the local people are calling for
2 action. We respectfully request that the Board adopt the
3 resolution to be discussed to properly maintain the Sutter
4 Bypass, as there is established legal documentation to do
5 so. Courage and good judgment now will go a long way to
6 preventing future disaster, loss of life and protection of
7 our habitat and all the things that we love. It is
8 important to understand that habitat in the proper place
9 is always welcome, but habitat that restricts the
10 conveyance capacity of our flood control system benefits
11 no one.

12 Thank you very much.

13 PRESIDENT CARTER: Thank you.

14 Jim, you got that particularly technical
15 language, the blah, blah, blah part?

16 (Laughter.)

17 SECRETARY DOHERTY: She can give you a copy.

18 MS. SUTTON: I have copies of all the laws and
19 references that I referred to.

20 SECRETARY DOHERTY: Do you want it, Jim?

21 THE REPORTER: Sure.

22 PRESIDENT CARTER: Thank you.

23 MS. SUTTON: Do I get it back?

24 PRESIDENT CARTER: Yeah, you can give it to him.

25 EXECUTIVE OFFICER PUNIA: I think that will be

1 good.

2 MS. SUTTON: Sure, as long as I get it all back,
3 because it's for our research.

4 PRESIDENT CARTER: Mr. Ellis.

5 MR. ELLIS: That's a tough act to follow.

6 President Carter, General Manager Punia, and
7 members of the Board. I am Tom Ellis, a landowner and
8 farmer in the Colusa basin and I'm President of the
9 Sacramento River West Side Levee District.

10 I apologize to you for bringing the Sutter Bypass
11 issue before you again. We sound like a broken record.
12 We are asking you today to address 20-plus years of
13 neglect in the Sutter Bypass.

14 And at the outset, I would like to express our
15 appreciation for the efforts of Kevin Forester, Manager of
16 the Sutter Wildlife Refuge, and his staff to address our
17 concerns in his current plans. But these plans still
18 violate the easements that exist on that land.

19 I'd also like to thank Noel Lerner for all of his
20 efforts. Truly we appreciate that.

21 But in order to truly understand and appreciate
22 the importance of our bypass system and the entire
23 Sacramento River Flood Protection Project, I think it
24 necessary to review just a little bit of history. I'm not
25 sure people really understand or know how much work was

1 done to provide our flood protection that has kept us
2 relatively free of devastating floods for over 80 years.

3 After the Gold Rush, the resulting population
4 boom required increased food production. Many gold miners
5 had been farmers prior to getting gold fever. They
6 recognized the fertile soil that existed in the Sacramento
7 Valley. But much of it was swampland, needing reclamation
8 before it could be made productive.

9 At about the same time, the Army Corps of
10 Engineers was doing extensive survey work in the valley
11 and they made two significant findings. First, that the
12 expected peak flows from the Sacramento River watershed
13 was 600,000 cubic feet per second. And, secondly, the
14 intensity of flood conditions in the Sacramento Valley was
15 greater than in any other United States river system. And
16 Sue Sutton referred to some of that study. And this was
17 given in Congressional testimony by the Army Corps of
18 Engineers in 1927.

19 Knowing these facts, before the engineers could
20 consider reclaiming the upper valley, they recognized that
21 a choke point existed in the Rio Vista area. To remove
22 this choke point they widened, straightened and deepened
23 12 miles of the Sacramento River channel, from Rio Vista
24 to Collinsville. And in so doing they moved more material
25 than was moved in the excavation of the Panama Canal. A

1 lot of work was done, folks.

2 Then they turned north. They built levees along
3 the liver channel and developed the bypass system that
4 would bring the expected 600,000 cubic feet per second of
5 flood flows through to Suisun Bay. This Sacramento River
6 flood control project was designed and built to operate as
7 a single system, providing flood protection for property
8 and public safety for the residents of our valley.

9 The lowlands from the Sutter Buttes south to Rio
10 Vista, the Colusa basin, the Sutter basin, the American
11 basin, which is the Natomas area, and the Yolo basin, were
12 intended by mother nature to receive these huge flows.
13 There's some area in the Butte basin north of the Buttes
14 that could be used too. But, truly, the bulk of it was
15 in -- from the Sutter Buttes south.

16 Now, this area depends upon the bypass system to
17 pass these huge flows effectively through to Suisun Bay,
18 so we can have urban development, a thriving economy, and
19 a flourishing agriculture.

20 In our particular area, the Sutter Bypass carries
21 180,000 cubic feet per second, while the main stem of the
22 river carries 30,000, a 6-to-1 ratio. That's more than
23 any other section of the river system that I know of.

24 In Sacramento area the Yolo Bypass carries
25 500,000 cfs, while the main stem of the river carries

1 110,000, 5 to 1. So our area depends -- our area north of
2 Sacramento depends on the bypass even more than the City
3 of Sacramento does.

4 We are totally dependent on the proper
5 functioning of the system for our safety and flood
6 protection.

7 The present vegetative buildup in the Sutter
8 Bypass presents a very serious concern to us, as we
9 believe that the engineers intended that the channel would
10 be kept clear of any and all potential impediments to the
11 movement of design flows through the facilities. Easement
12 language clearly says this. And we have historical
13 documents saying that at construction -- at the time of
14 construction some areas, and in particular the Butte
15 Slough area, they mention it had to be cleared of existing
16 vegetation. And then they added that it had to be kept
17 clear.

18 In my mind, the current buildup of vegetation was
19 not to be allowed in the plans for maintenance of the
20 floodway. This is why we have come before you today, to
21 ask that you exercise your duty to return the Sutter
22 Bypass to its proper condition so it can move flood flows
23 again effectively, reducing the flood threat in our area.

24 A final thought. These flood control channels
25 are just like irrigation or drainage ditches on our farms.

1 And I know Mr. Carter understands this. Every farmer
2 knows he must keep them clean if he's going to be able to
3 move water through them effectively.

4 Another way to look at it is to understand that
5 these bypasses have very little slope, averaging only four
6 to six inches per mile. And as Lewis Bair says - and I
7 quote - "They are like the gutter on your home. If you
8 don't clean the leaves and the debris out of them, they
9 don't work very well when the rains come."

10 And I want to thank you for giving me this time
11 to address you. And I'd entertain any questions or
12 comments

13 PRESIDENT CARTER: Thank you.

14 Any questions for Mr. Ellis?

15 Thank you very much.

16 MR. ELLIS: Since Fran Peace has left, I'm going
17 to tell you that Congresswoman Matsui is watching this
18 very closely too. She -- yes. Her chief of staff here in
19 the local Sacramento office has been out with us. Lewis
20 and Fritz Durst and I took him, and he has seen the
21 situation. And he wants to know if people are dragging
22 their feet. So the Congresswoman's watching this very
23 closely also.

24 PRESIDENT CARTER: Thank you.

25 BOARD MEMBER SUAREZ: Well, do you know if the

1 Congresswoman has been in touch with the Department of
2 Interior regarding this issue?

3 MR. ELLIS: I can't answer that.

4 BOARD MEMBER SUAREZ: Well, that's key. I mean
5 watching is great. But, again --

6 MR. ELLIS: I think they're kind of waiting to
7 see what Fish and Wildlife actually do. And then if --
8 like they said, "Let us know if they appear to be dragging
9 their feet."

10 BOARD MEMBER SUAREZ: So the Congresswoman's
11 office is watching to see what Fish and Wildlife Service
12 does about this?

13 MR. ELLIS: Respond -- how they respond to this.

14 BOARD MEMBER SUAREZ: And why can't we do the
15 same?

16 MR. ELLIS: Wait?

17 BOARD MEMBER SUAREZ: Correct.

18 MR. ELLIS: That's nice for you to say. You live
19 somewhere else. I happen to live alongside this
20 situation, and I'm not very comfortable with that waiting.

21 BOARD MEMBER SUAREZ: I understand that. But my
22 point to you, sir, is, again, this is a conflict of
23 federal laws. And it's very difficult for us sitting here
24 as a state entity what -- because, in essence, what you're
25 asking us to do is to order or ask the Department of Water

1 Resources to violate environmental laws -- federal
2 environmental laws. And that's a very difficult thing for
3 us to even ask. Number one, I don't think we have the
4 power to mandate such a thing. But much less, it's just
5 difficult to ask them to engage in that kind of behavior.

6 So my only point to you is -- I understand that
7 the Congresswoman is watching the situation, because it is
8 a difficult -- you've got very important laws that are in
9 conflict, and they're a very difficult situation to handle
10 for her. So I just hope you appreciate how much even more
11 difficult it is for us sitting here as a state entity to
12 deal with.

13 BOARD MEMBER BROWN: Mr. Chairman?

14 PRESIDENT CARTER: Mr. Brown.

15 BOARD MEMBER BROWN: This is an area that's very
16 dear to my heart. And it's clear that these folks out in
17 the audience have spoke very clearly and precisely as to
18 our responsibility and, to some extent, our authority
19 within the state.

20 I've made in the last -- probably in the last 30
21 days two presentations in which representatives of
22 Congressman Cardoza was present and Congressman Lundgren
23 was present. And I told them of our efforts to try to
24 build reservoirs, improvements in channels, and so forth,
25 to try to get something done in this state in the way of

1 water supply and flood control protection. And that every
2 turn that we'd come into there's always some giant garter
3 snake or kit fox or giant sycamore stopping the project.

4 DWR has been trying the build an offstream
5 storage dam down in Los Banos Grande for 26, 27, 28 years.
6 And there are no near -- closer today than they were when
7 they started, because of some sycamores that stand in the
8 floodplain of that project.

9 We have to have some slack cut into the
10 Endangered Species Act. There just has to be. There has
11 to be some slack cut for human needs and economics.
12 Because every time we go after a project such as what
13 you're speaking of or a dam, reservoir and such, there's
14 legal firms, whether it's ACLU or offshoots of it, just
15 waiting to go ahead and take it on to -- they'll win the
16 suit, and they fill their coffers from the results of that
17 suit. And that's what was told to me by the
18 representative from Dan Lundgren's office; says they have
19 the law on their side - federal law trumps state law, as
20 you know - and they win. And they have coffers that are
21 quite full right now. And I asked him, "Why don't you
22 take them on to try to do something?" And the response
23 was they have such funding available to them and the law
24 on their side, you just can't win.

25 I suggested back to him, "You mean it would take

1 an act of Congress to do something?" And I thought that
2 was kind of funny, but nobody else laughed.

3 (Laughter.)

4 BOARD MEMBER BROWN: So that's the problem we
5 have here, is that when we try to do these projects that
6 obviously need to be done and we take them on, there'll be
7 something out there on the endangered species or a
8 threatened list that others are waiting to pounce on and
9 take us on.

10 So what you can do to help us on this is to try
11 to get some slack cut in that Endangered Species Act that
12 can enable some sound judgment that takes into human
13 concerns, health concerns. As a for instance, there's a
14 lot of water being cut out of the Delta right now that --
15 for environmental needs that are really hurting the
16 farmers in the San Joaquin Valley. In fact, there's
17 several thousands of acres that's gone fallow this year
18 because there's no water to irrigate them. And they're
19 even starting to fallow some permanent cropland. And one
20 thing that happens when you fallow that land and the wind
21 starts to blowing, it picks up particle mass 10, or in
22 this case I think it was 2.5 in the valley. And as this
23 particle mass picks up, it picks up the fungi out of the
24 soil and starts to get into people's lungs and the valley
25 fever and such as that. And that needs to be considered.

1 That should trump the Endangered Species Act as far as
2 threatened or endangered if it starts to endanger the
3 health of people. But it doesn't.

4 And that's what we've got to do. You can help us
5 by trying to come up with something that can get a
6 congressman or a senator yet to do something with the ESA.
7 And my cohort, Emma, is exactly right. That's where we
8 are on this nonsense.

9 MR. BAIR: Can I make a follow-up comment I think
10 that will help clarify this exact issue? I think it's
11 important because it's -- I agree with Emma and John
12 completely, that -- and I think that this case right here
13 in the Sutter Bypass is a perfect example. We've had a
14 levee failure. And it's a perfect conflict. It's very
15 supportable on the state side for your mission. But we
16 can't have that conflict, because right now we haven't
17 asked to remove that. We haven't justified that with a
18 two-dimensional model that said, "We need to remove that.
19 Look, we've had a levee failure. We know it's creating a
20 problem. As DWR, we have a program, we're going to come
21 in and enforce these easements." And they haven't stepped
22 up and said, "No, you can't," and created that obstacle,
23 for us to have the argument, which I think you'll see
24 quite a few congressional folks jump in on-board and other
25 folks.

1 So what we're asking for you today to -- in some
2 ways is to create that confrontation, because we think
3 it's out there. Right now it's passive. Right now your
4 staff is worried about going out into the Sutter Wildlife
5 Refuge and doing what, you know, at times they feel is
6 their job and duty because there's this quiet threat. And
7 I think we ought to have that conversation, because you've
8 got 1600 miles of levee and a lot of bypass system where
9 that happens passively. And here's a great situation
10 where you had a failure, you've got a clear problem, and
11 it makes sense for us to have that conversation here.

12 PRESIDENT CARTER: Thank you.

13 SECRETARY DOHERTY: May I address Emma's concern
14 too.

15 I think that what happened is we kept coming
16 before the Board, and Mr. Dietrich did go out with us into
17 the bypass. He saw the problems, wanted to follow up with
18 us. But I think part of it was my fault because I didn't
19 say to you guys, "Let's act. Let's do something." I just
20 thought it was all going to happen. They knew it was bad.
21 We knew it was bad. So that's why we have a resolution
22 today, so that we can take a stand. Then we can go back
23 to Mrs. Matsui and Senator Aanestad and the rest of them
24 and say, "We've got a problem now. Now we need your
25 help." But that's why I think it didn't take place.

1 PRESIDENT CARTER: I think what we ought to do --
2 we can some more of this discussion. Let's hear from the
3 pest of the public.

4 Mr. Teesdale, did you want to add something?

5 MR. TEESDALE: Mr. President, the deed of January
6 6th, 1914, that was long before the environmentalists and
7 everybody else. That doesn't have any weight? That has
8 no weight today.

9 BOARD MEMBER BROWN: Well, federal law trumps
10 state law.

11 PRESIDENT CARTER: Understand --

12 MR. TEESDALE: I tell you, what's this government
13 coming to? Thank you.

14 BOARD MEMBER SUAREZ: Hey, I hear you. Here!
15 Here!

16 (Laughter.)

17 PRESIDENT CARTER: And I think that -- I don't
18 think that anybody's asking anybody to violate laws or
19 asking the Board to ask DWR to violate environmental laws.
20 We do brush clearing and whatnot all the time. We have to
21 do mitigation for that, and we have to take care of the
22 environmental considerations at the same time. So I don't
23 think that anybody's asking anybody to violate things. It
24 makes it more difficult, more expensive. But most of the
25 time it's possible.

1 Ms. Indrieri.

2 MS. INDRIERI: I'll make my comments brief. I
3 know you have other items before you today.

4 Mr. Chairman and members of the Board. Thank you
5 for allowing me to speak today. I Ashley Indrieri, the
6 Executive Director of Family Water Alliance.

7 Family Water Alliance is a nonprofit organization
8 supported by family farmers, local businesses, and many
9 residents throughout the Central Valley that support the
10 preservation of agriculture in California.

11 For decades FWA has advocated for increased flood
12 control for rural communities and for state and federal
13 agencies to carry out their responsibilities to maintain
14 the entire flood control system.

15 I am here today to ask you to support the
16 resolution that is before you. FWA has called attention
17 to the Sutter Bypass for many years to bring to light the
18 risk to public safety that the lack of maintenance and the
19 National Wildlife Refuge poses to the surrounding
20 communities.

21 It's encouraging to see your board address this
22 item today. The residents of these communities deserve to
23 be assured that the Sutter Bypass is functioning as
24 designed and that their communities are being protected
25 from flooding that could have been prevented. I can

1 assure you I have asked the same thing of U.S. Fish and
2 Wildlife that holds those easements and owns land within
3 the Sutter Bypass.

4 As a resident of Colusa County and on behalf of
5 the FWA Board of Directors, I respectfully urge you to
6 adopt the resolution before you and carry out the 2D
7 modeling that needs to be done within the Sutter Bypass.

8 Thank you.

9 PRESIDENT CARTER: Thank you.

10 Mr. Countryman.

11 MR. COUNTRYMAN: Joe Countryman once again, MBK
12 Engineers.

13 This discussion has gone in a lot of different
14 directions. But I think Lewis Bair started it off right,
15 with the right tone. I don't believe there's an
16 accusation on the table that Fish and Wildlife Service is
17 preventing needed maintenance in the Sutter Bypass. At
18 least I haven't heard it. I haven't heard Keith Swanson
19 say that. I haven't heard Noel say that.

20 I think there's a rush to judgment that Fish and
21 Wildlife Service is stopping the state from doing needed
22 maintenance in the Sutter Bypass. If that's the case, I
23 wish that someone from the state would stand up and say
24 so, because it's not clear to me that that is actually the
25 case.

1 I know Kevin Forester. And I don't believe that
2 he would obstruct the need for maintenance -- flood
3 control maintenance. You know, he may be ignorant of, you
4 know, what's involved. But I think if it was clearly
5 shown that this work needed to be done -- it's really hard
6 for me to think that he would, you know, stand at the
7 schoolhouse door and say, "No, you know, you can't get any
8 equipment past me."

9 So, again, if we have the tool that we can say,
10 "Gee, this is how this bypass is operating" -- and when I
11 say tool, I'm talking about this 2D model -- "this
12 vegetation here, this vegetation there is causing this
13 problem and that problem. We need to go in and clear it.
14 Fish and Wildlife Service, this is what we need to do," if
15 they say, "No, you can't do it," then I think, you know,
16 we can bring congressional heat on, we can, you know, do a
17 lot of things. But I don't think we should presume right
18 at this moment they're going to say, "No, you can't do the
19 needed maintenance." I think where we've been deficient
20 is taking before them the case, and I think that's what
21 this resolution is about.

22 We need to establish the condition and the case
23 for additional maintenance beyond and above what Noel
24 described earlier. And until we have that, I think it's
25 hard for us to really say this is a federal-state issue.

1 I mean I don't think it's quite reached that point yet.

2 BOARD MEMBER SUAREZ: Perhaps I have the wrong
3 resolution in front of me then.

4 MR. COUNTRYMAN: What does --

5 BOARD MEMBER SUAREZ: Perhaps what I have in
6 front of me is the wrong resolution. There must be
7 another one floating around then, because I don't disagree
8 with your points. But that's...

9 VICE-PRESIDENT HODGKINS: Joseph, as I recall,
10 the 2D model for the Yolo Bypass cost 600, \$700,000. You
11 could start here, I would assume, using a 2D model to
12 focus on the area around the wildlife refuge and not
13 necessarily develop a whole one for the bypass, or you
14 could do a whole one for a bypass.

15 What do you think the time and effort -- I'm not
16 asking you to quote. Give us an idea.

17 MR. COUNTRYMAN: Well, the thing is that the
18 State has already paid and has had flown the detailed
19 LiDAR information that would be necessary to formulate the
20 2D model. They paid for that. They are currently paying
21 to have that data processed. We expect within a couple
22 months that data would be available. Once that topography
23 data's available, you can pop pretty quickly to the 2D
24 physical model. And then it's a matter of getting the
25 roughnesses in and stuff like that. And it's basically

1 using aerial photography and some site investigations.

2 So I'm not thinking it would be horribly
3 expensive to -- I don't think it would be like \$600,000 to
4 do this, because of all the work that the state -- the
5 money the state's already invested in this. And, you
6 know, part of the State Plan of Flood Control is to
7 develop these working models to do this type of analysis.
8 So I think the funding is even there to develop the needed
9 modeling in this particular case.

10 Then we're talking from facts, and we can do the
11 right thing. And I think we can make sure the federal
12 government does the right thing.

13 BOARD MEMBER RIE: Question?

14 VICE-PRESIDENT HODGKINS: Thank you.

15 PRESIDENT CARTER: Go ahead.

16 BOARD MEMBER RIE: What is the expected result of
17 this two-dimensional model? What is it going to tell us?

18 MR. COUNTRYMAN: It will tell you in quite
19 specific terms of what kind of -- for different flows, the
20 kind of stage increases that may be caused by vegetation
21 any place in the bypass.

22 BOARD MEMBER RIE: Are we looking to make the
23 point with some technical data that the old growth forest
24 is causing a blockage in the bypass? Is that the end
25 result?

1 MR. COUNTRYMAN: Well, I think the -- well, it
2 will document what the situation is. In other words --
3 and there was some mention previously there was unease
4 about maybe clearing the underbrush versus removing the
5 trees. And at least in my experience in the hydraulic
6 modeling world, the underbrush and the heavy understory is
7 what resists the flow, not the trees themselves. There's
8 not that much resistance from the trunks of the trees.
9 It's the understory and all of that stuff we saw in the
10 pictures here that really retards the flow.

11 So you can do that type of analysis. You can
12 say, "Well, if we leave the trees in and we remove all the
13 understory, this is what we would have."

14 Now, if the thought is, like Tom mentioned, let's
15 just go back to the original no trees, regardless of the
16 hydraulic impact, I mean that's another approach. But I
17 think it's a harder approach if there are environmental
18 consequences to it to pursue.

19 BOARD MEMBER RIE: I'm just trying to understand
20 what exactly our end result is. Do we want all vegetation
21 removed? Do we want just the trees removed? Do we just
22 want the undergrowth removed? What are we hoping a
23 two-dimensional model is going to tell us? What's our
24 goal?

25 MR. COUNTRYMAN: Well, I think goal would be,

1 what work is necessary to assure that the Sutter Bypass
2 will operate as planned -- designed and planned? Can it
3 withstand some trees or no trees?

4 BOARD MEMBER RIE: Do we already know the answer
5 to that? Do the professional hydraulic engineers already
6 know that? Do you know that? And what's your gut
7 professional opinion?

8 MR. COUNTRYMAN: My gut feeling is that there's
9 got to be some removal out there in order for it to
10 function as planned.

11 BOARD MEMBER RIE: More removal than is currently
12 happening?

13 MR. COUNTRYMAN: Well, that again gets back to
14 the question of what the state's being allowed to do and
15 not to do. In other words, if the state -- and they spoke
16 to this. They've identified areas where they need to
17 clear understory, where they need to do additional work.
18 If they're able to do all that, maybe there is no problem.
19 If they're not able to do that, there undoubtedly will be
20 a problem.

21 But if Fish and Wildlife Service is saying now,
22 "If you think this needs to be done, go ahead and do it,"
23 the clearing of the understory, for instance, that may
24 solve the problem.

25 BOARD MEMBER RIE: Okay.

1 PRESIDENT CARTER: Thank you very much.

2 Mr. Shapiro.

3 Ladies and gentlemen up here, we need to pick up
4 the pace.

5 MR. SHAPIRO: President Carter, members of the
6 Board. Scott Shapiro again, General Counsel for the Flood
7 Control Association.

8 Picking up on Joe Countryman's remarks as the
9 engineer for the association, but offering a little bit of
10 a legal spin. There's no question the bypasses are
11 essential for our flood control system. They're the
12 reason they work. And I think one of the key points here
13 is that this Board is the steward of those bypass systems.
14 You're a steward for two reasons: 1) You're the
15 regulating entity via authority from the Corps; and,
16 second, you're the Board that oversees the Sacramento-San
17 Joaquin Drainage District, which owns the land.

18 And if I had to say what the key message that I
19 get out of this is it's not so much, do we need a
20 one-dimensional model or two-dimensional model or, you
21 know, do we have the money or don't we have the money?
22 It's we need collectively to get a handle on who has what
23 rights. And I don't think we have that handle. George
24 Basye, my partner, who's now retired, came to the
25 conclusion that indeed the rights that the state has are

1 superior to the rights of the federal government in that
2 area, in the refuge area.

3 Ms. Suarez rightly asks, does the state agree
4 with that analysis? Then, does the federal government
5 agree with that analysis?

6 But the local agencies have not had the position
7 or power to push that issue with the federal agencies.
8 And we're coming before you today, the local
9 representatives in the community are coming before you
10 today saying, "Will you push the issue? Will you find out
11 what the rights are? Will you inquire to the federal
12 government whether it agrees or not. And we can see
13 whether there's a conflict and then decide how to evaluate
14 the conflict."

15 I guess the final point that I'd like to make is,
16 we need to remember that there's actually two interests
17 that the federal government has here and there's two
18 interests that the state has here. Property owner and
19 regulator in both cases.

20 The federal government came in and created the
21 refuge as a property owner. It didn't come in and create
22 it as a regulator. That doesn't mean that when you go to
23 do work, you can avoid the Endangered Species Act. And so
24 the easements may say, "As a property owner, you can do
25 what you want." But the regulations may say, "But you

1 have to mitigate for it."

2 And you as the Board, as the overseer of the
3 owner of the easements, have certain rights to enforce as
4 a property owner, owner of the easement, and certain
5 rights that you need to enforce as regulator.

6 So what I would request on behalf of the Flood
7 Control Association is at a minimum you charge staff with
8 reviewing the material that's been presented - I'll get
9 you the George Basye analysis if you don't have it - and
10 review it and see if your counsel agrees, and then perhaps
11 a dialogue could occur with Fish and Wildlife Service to
12 see if they agree. And at a minimum you can come back in
13 a month or two and have a better sense of what the ground
14 rules are to then decide, okay, do we need to say to Ms.
15 Matsui and Mr. Herger, "You need to get some funding,"
16 because they have an obligation to do something, or we
17 need some funding or we need bond funds or we need local
18 funds.

19 But I don't think we understand the circumstance
20 well enough to come up with a specific plan.

21 Thank you.

22 BOARD MEMBER BROWN: I have a question for you,
23 Scott.

24 What environmental documentation, if any, do you
25 think would be required to go ahead and to advance the

1 project to where we can activate and hopefully do
2 something?

3 MR. SHAPIRO: What environmental documentation
4 would be required to take the action of clearing?

5 BOARD MEMBER BROWN: Yes.

6 MR. SHAPIRO: Well, if the state is going to take
7 the action, it needs to comply with CEQA. If you need any
8 federal permits, you're going to have to comply with NEPA.

9 BOARD MEMBER BROWN: I understand that. But what
10 I'm asking you is, what do you think would be required?
11 Can we go ahead and do it without it? Can we do it with a
12 finding of no significant findings or --

13 MR. SHAPIRO: I don't understand the conditions
14 in the ground well enough to offer a thought as to what
15 level of NEPA or CEQA compliance would be required.

16 BOARD MEMBER BROWN: Well, here's the problem and
17 experiences I've had. Once you open it up to that, then
18 you have people that start coming out of the woodwork all
19 over as taking part of the hearings. And you know what
20 happens when that occurs.

21 MR. SHAPIRO: The comprehensive plan, CCP that
22 Fish and Wildlife Service has on that refuge, a draft was
23 made available to the local agencies. And Lewis Bair
24 wrote a letter back saying, "We think this is a great
25 start. We really do. We appreciate the fact that you're

1 coming here, you're clearing, you're helping the issue.
2 We still think that there's an easement that requires you
3 to do more, but we think this is a great start."

4 I'm not aware of whether the State of California
5 commented on that plan. Had you commented on that plan,
6 maybe their plan would be -- would do more and you
7 wouldn't have to do any environment compliance because it
8 would be their work. But we don't understand well enough
9 what to ask them to do, because I don't think we've fully
10 evaluated the rights and obligations in this case.

11 BOARD MEMBER BROWN: Have you read this
12 thoroughly? Do you --

13 MR. SHAPIRO: What is that?

14 BOARD MEMBER BROWN: The resolution.

15 MR. SHAPIRO: I haven't seen it.

16 BOARD MEMBER BROWN: Go ahead and read it.

17 That's what you're asking us to do. And maybe it's --
18 maybe that's the way we initiate it and find out just
19 exactly what we can do and who would take us on on this.
20 And maybe this is the vehicle to go ahead and help open up
21 the ESA just a little bit where we can do it.

22 MR. SHAPIRO: And I haven't seen the resolution.
23 And I'm not advocating in favor of the specific action
24 requested under it. I'm saying I think that there needs
25 to be ownership by the Board of figuring out what the

1 rights and obligations are.

2 LEGAL COUNSEL CAHILL: President Carter, could I
3 follow up on that?

4 PRESIDENT CARTER: Yes.

5 LEGAL COUNSEL CAHILL: Ward Tabor of the
6 Department of Water Resources was here earlier and he had
7 to leave. But as he left he said to me, "This has never
8 been brought to me. I've never been asked to review any
9 of these documents." He said, you know, he and I could
10 get the documents, review them, try to come to some legal
11 conclusions, possibly negotiate with Fish and Wildlife.
12 The problem for us is we haven't seen the Basye memo, we
13 haven't seen the Jeff Fong memo, we haven't seen the
14 easements. That does seem like a logical first step.

15 VICE-PRESIDENT HODGKINS: Could I add to that.
16 You're going to have to decide I think, at least address
17 the question as was presented here, we have one capacity
18 design flow listed in the O&M manual and a different one
19 listed in the '57 profile. And I asked Ward during the
20 break which governs. And he said, "Off the top of my
21 head, they both apply." So it's whichever one is the more
22 conservative.

23 But to me that is the base point for the Board
24 understanding what it's obligation is. Or if that's not
25 the base point, help us understand what it is.

1 SECRETARY DOHERTY: May I interject something
2 briefly?

3 PRESIDENT CARTER: Yes.

4 SECRETARY DOHERTY: That's the whole purpose of
5 bringing this resolution before us, was to start gathering
6 answers for this thing. And we've never brought the
7 resolution and we've never made a motion before. So this
8 is why we need the resolution, so that we start doing some
9 of these things and finding the answers.

10 BOARD MEMBER BROWN: This resolution directs DWR
11 to do some very specific things.

12 SECRETARY DOHERTY: Maybe those are the things
13 that are allowed.

14 BOARD MEMBER BROWN: Well, I hope so. But I'm
15 fearful that they're not.

16 BOARD MEMBER SUAREZ: Mr. President, if I may.

17 PRESIDENT CARTER: Please.

18 BOARD MEMBER SUAREZ: I thank -- number one,
19 thank you, everybody, for this very, very thorough
20 testimony this afternoon. I really appreciate the
21 members -- especially the members of the public coming
22 this afternoon and sharing their concerns.

23 I heard at least eight different acts this
24 afternoon, I heard eight different versions of what this
25 resolution says and doesn't say. So to me I keep asking

1 myself, I wonder if I have the right resolution. I do
2 know that the resolution that I have here in front me
3 makes assumptions about what the Department of Water
4 Resources can and cannot do. And as Mr. Shapiro so
5 eloquently put, much better than I could because he's a
6 lot smarter than I am, we don't know what the rights and
7 responsibilities here are. We have old documents. We
8 have new environmental laws. We have issues that I doubt
9 have ever been mitigated regarding our ability as a state
10 to push a federal entity to do something when they don't
11 feel compelled to do it.

12 So to me there's a lot of unanswered questions,
13 that before we take a step forward, putting everybody on
14 notice, including the federal government, that this is a
15 serious issue that we were going to take on, that we're
16 ready to direct anybody to do anything.

17 As I say, I heard at least seven different
18 requests from folks that came to the microphone. A lot of
19 them don't show up in this resolution. What I do see in
20 this resolution does worry me. So I would really like us
21 to proceed with caution, having put everybody on notice
22 that this is a serious issue that we plan to take very
23 seriously.

24 PRESIDENT CARTER: There's clearly a lot of
25 energy, both emotional and other, behind this issue.

1 There's a lot of frustration out there on the part of the
2 locals in terms of trying to get things going and having
3 limited success.

4 I guess this resolution -- this draft resolution
5 that was given to us was an attempt at a beginning. We'd
6 entertain direction from the Board to direct our staff.
7 It's pretty clear that there are a lot of unanswered
8 questions and we probably ought to make some action here
9 to begin this process or move this process forward in
10 terms of trying to understand, one, the technical aspects
11 of it, as well as the legal aspects of jurisdictions and
12 authorities.

13 BOARD MEMBER RIE: I'm just wondering if we could
14 have DWR respond to some of the questions. I'm not sure
15 what DWR has done or not done with respect to the wildlife
16 plan, or fish and wildlife. I'm just wondering if DWR
17 could come up and answer some questions.

18 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

19 Keith Swanson, Chief of the Flood Maintenance
20 Office. I was sitting with my bosses and they looked at
21 me and smiled. So I'm here.

22 (Laughter.)

23 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

24 We've started research trying to figure out why
25 the O&M manual was different than the '57 profile. And

1 we've asked the Corps. We've asked Joe. Joe asked his
2 ex-partner, who was active back in those days. We got a
3 couple of other old timers we're trying to run down and
4 ask.

5 I know the whole issue of vegetation management,
6 we've engaged the Corps on that in the past. And we've
7 gotten the Sacramento District to write us a letter that
8 said our obligation was to maintain so that we could
9 safely pass the design flow as represented by the '57
10 profile and not encroach on that stage level. And so at
11 least in one written document they said that is what our
12 obligation is. When I asked Jim Sandner, again I said,
13 "Do you know that there's a discrepancy between the O&M
14 manual that predates the '57 profile and the '57 profile?"
15 And he said, "There is?" And so clearly we have to do
16 work on that.

17 We have an 1D model, because that was what we
18 started with and that is the state of the practice right
19 now. I mean the Corps in the past did a 1D model. And
20 then MBK modified the 1D model. And now we've gone and
21 tried to do a -- you know, modify that to reflect the work
22 that has been accomplished since about 2002. And so I
23 think it's a good suggestion to move forward with a 2D
24 model. And there likely is funding in the bond to do
25 that. And certainly it's the Department's intent to make

1 calls on vegetation management and sediment buildup, you
2 know, channel management based on hydraulic models.
3 Because that's far better than what we did in the past,
4 which was go out and point fingers and kind of take
5 educated guesses. So I think that is a proper direction
6 to go and I think we'll embrace that and move forward.
7 And I think that based on the models, then we do need to
8 take actions.

9 Now, Fish and Wildlife has been very good to work
10 with. I mean they've been very reasonable. The folks
11 that run the refuge, Kevin Forester, Mike Peters, are
12 considerably different and a lot easier to deal with than
13 some of the folks that work in their Endangered Species
14 Section.

15 So we're dealing with a group that -- you know,
16 Kevin has had to argue with his people to do the work in
17 old grove and he's had to tell them, "This is fantastic
18 habitat. Problem is it's in the wrong place." And we
19 endorse that and we're supportive of that. And we face
20 that on a regular basis.

21 And so, you know, I don't think we should
22 assume -- and I agree with Joe's comment that -- you know,
23 I don't think they're stopping us from doing any work out
24 there per se. But there is the conflict, and you guys
25 brought it up, relative to operation and maintenance and

1 the Endangered Species Act and the Clean Water Act.

2 And what we've been doing the last eight years,
3 maybe six years out in the bypass, we've been
4 incrementally addressing the problem. It's not to the
5 satisfaction of the locals. But I don't think we have
6 that hump anymore because we've done a significant amount
7 of vegetation clearing out there. We're not where we want
8 to be. We've identified some specific locations. One of
9 the areas is on Fish and Wildlife property. But the rest
10 of the areas are on private property.

11 And so if the Board wants to take some action,
12 you guys are very effective in mobilizing community
13 consensus. And if you could work with us to get some of
14 those property owners to take on some of that
15 responsibility themselves. Most of the bypass is in
16 agriculture, and that's not our problems. But there are
17 some properties out there that people are not managing.
18 They're certainly not managing for flood control. They've
19 let them go wild. And if we have to get in, that's extra
20 work on our part. And then we have to deal with the ESA
21 issues, and we certainly are held to different standards
22 than somebody that farms.

23 And so if, you know, collectively we go out and
24 start trying to raise that level of consciousness and talk
25 to some of these land holders about their obligations and

1 what their lack of activity potentially -- how it
2 potentially impacts their neighbors, I think that would be
3 a good thing that we could do also.

4 Understanding the easements better, I think we
5 should look at that. It's my understanding the easements
6 give us the right to go in and maintain. But if we can
7 get people to do it themselves, maintain their own
8 property, that's a heck of a lot better.

9 So there's a couple suggestions, a couple issues.

10 SECRETARY DOHERTY: Those suggestions that you're
11 mentioning are in this resolution. And one of the things
12 I did is I asked Mr. Punia, "Have any landowners been
13 notified of any violations?" Because there's some down
14 near where the confluence of the Feather and the bypass,
15 and that landowner has not. So nobody's been notified.
16 But that's why we're having the resolution, so that maybe
17 some of this can be accomplished.

18 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

19 Well, you know, your first point, you know -- the
20 Board will direct the Department of Water Resources to
21 maintain the Sutter Bypass in accordance with criteria
22 established by the U.S. Army Corps of Engineers. You
23 know, I know the Water Code tells me that. AB 361 says
24 that the Department of Water Resources will maintain
25 features of the Sacramento River Flood Control Channel

1 including the bypasses. And so I think that's covered,
2 and we understand we have that obligation.

3 You know, there are the issues though with
4 funding, you know, resources, ESA, Clean Water Act, land
5 holder, you know, that kind of thing.

6 And so the second, "The Board in accordance with
7 DWR shall notify all land holders in the Sutter Bypass who
8 are in violation of flowage easements with a copy of the
9 easement appurtenant to their property, inform them of the
10 duties, rights and likely activities by the Department of
11 Water Resources regarding the enforcement thereof."

12 Again, I'll go back to what I said earlier. If
13 the Board can work with us, work with the land holders,
14 get the land holders to do something, that would be
15 fantastic.

16 If we're going to do it, we're moving forward
17 already, we identified what we consider to be about the
18 five most critical areas. We're continuing to work on
19 those. I know people would like us to get in there with
20 dozers and knock it out. We find that when we try to do
21 that, then we run afoul of the ESA issues. When we work
22 slower to manage things and through time change the
23 vegetation to another type of vegetation, then people are
24 a little a bit more understanding of that. And that's
25 been much more successful for us. It's a little bit

1 slower. But we're finding that's what we have to do to be
2 successful.

3 BOARD MEMBER RIE: Question?

4 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes.

5 BOARD MEMBER RIE: Mr. Swanson, it was suggested
6 earlier that DWR staff somehow didn't understand the
7 rights to do maintenance and, therefore, you were avoiding
8 some maintenance because you just didn't understand or
9 there was a conflict with Fish and Wildlife as to who has
10 prior rights. Is that correct?

11 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: No,
12 I don't think that's the confusion.

13 Where we struggle on a regular basis is to comply
14 with Endangered Species and Clean Water Act and Fish and
15 Game Code and CEQA, you know, all those different things.
16 And so I mean we understand how to clean vegetation and we
17 understand that vegetation affects flow. But where we
18 have the problem is how do we do it in a manner that
19 addresses public safety but also protects and enhances the
20 environment and is consistent with all the various laws
21 that we have to comply with?

22 BOARD MEMBER RIE: Are there endangered species
23 out there?

24 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

25 Sure. There's endangered species everywhere.

1 And, you know --

2 SECRETARY DOHERTY: What are they?

3 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

4 Well, cuckoo in that area. But, you know --

5 SECRETARY DOHERTY: It was not listed.

6 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: But
7 there's clean water issues because that's a water of the
8 U.S., and so there's 404. And then when you get -- you
9 know, with a 404, then you have to go and do consultation
10 with the federal agencies and get a biological opinion
11 that allows you to do the work. You have to get a 1600
12 agreement. You have to get a 401 from the regional water
13 quality control board.

14 When we did Tisdale Bypass I think we got eight
15 different permits. And that's -- you know, to do it
16 legally, to dot all the i's, cross all the t's. Which if
17 you're going to go in there and do something very
18 substantial and all at once, you got to get all those
19 permits. I mean it's a huge amount of work. And it's
20 difficult and slow, cumbersome to get through. And one of
21 the first things they'll ask you is, "Well, why are you
22 doing this?" And so you do need that hydraulic model.

23 But people -- and forums like this are very
24 beneficial in getting people to acknowledge their public
25 safety obligations. And I think we've been able to do

1 that in the last couple years with a lot of these
2 agencies. And so if we show hydraulically that something
3 has to be done, then the agencies now are much more
4 willing to work with us. And people like Kevin Forester
5 and Mike Peters with the Sutter Wildlife Refuge have been
6 very good to work with.

7 BOARD MEMBER RIE: One more question.

8 If we do modeling and it shows that the old
9 growth forests, the large trees need to be removed -- now
10 we've heard earlier that Fish and Wildlife says it's part
11 of their plan to leave those trees in, that the trees
12 provide good habitat -- is there a specific endangered
13 species in those trees that would preclude us from
14 removing the trees if our model showed they needed to be
15 removed? Is there something really special about that old
16 growth forest that nobody has removed it for the last 20
17 years?

18 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Fish
19 and Wildlife has gone in and done what they've done
20 without any additional mitigation. Now, they've removed I
21 think trees up to 22 inches. So they've removed some
22 fairly big trees. And I don't know that they wouldn't be
23 adverse to removing more trees. But they don't
24 necessarily want to do it unless we demonstrate that
25 there's a hydraulic reason to do that.

1 Based on our one 1D model, it shows that we're
2 pretty close, and the things that we're doing get us close
3 to where we need to be. Now, that's not to say that if we
4 do a 2D model we don't find out that there's more work
5 that has to be done. And then I would think that we would
6 approach them, and I would imagine they would be working
7 with us.

8 Now, if we go down to somebody's private property
9 down by the Feather River where there's some heavy growth
10 down there and talk to the owners, and the Department
11 moves forward with a plan to clear out that stuff out, we
12 will end up getting into a mitigation situation, no doubt.

13 PRESIDENT CARTER: Mr. Swanson, has the
14 Department commented on the Fish and Wildlife Service's
15 plan -- conservation plan?

16 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: No,
17 we haven't.

18 PRESIDENT CARTER: Do you plan on commenting on
19 it?

20 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: I
21 had not specifically planned on commenting. It did have,
22 you know, a section in the back that talked about managing
23 for conveyance. And my personal feeling was that they
24 were willing and going to be working with us.

25 PRESIDENT CARTER: Mr. Punia, has our staff

1 commented on the conservation plan?

2 EXECUTIVE OFFICER PUNIA: No, we haven't
3 responded to that plan.

4 PRESIDENT CARTER: Okay. So we've got an agency
5 that's doing land management in the floodway where we have
6 easements and they've published a long-term plan and we
7 have not commented on that?

8 SECRETARY DOHERTY: The comment period was up the
9 12th of September.

10 PRESIDENT CARTER: And DWR hasn't commented on
11 that? That seems like a very large oversight.

12 BOARD MEMBER RIE: What's to preclude us from
13 commenting after the fact?

14 PRESIDENT CARTER: There's nothing to preclude us
15 from commenting at any time, I don't think.

16 BOARD MEMBER RIE: Is it a done deal? Is it
17 approved?

18 PRESIDENT CARTER: Don't know the status. Nobody
19 from Fish and Wildlife is here.

20 Okay. So, ladies and gentlemen, we need to kind
21 of move on here.

22 What I would suggest is that we -- there seems to
23 be general concurrence that a 2D model is a good idea to
24 try and understand what the implications are of vegetation
25 in the bypass. So I would suggest that we do what we can

1 to initiate a transition from a 1D analysis to a
2 two-dimensional analysis in there.

3 Mr. Swanson mentioned raising the consciousness
4 of the private property owners. That for the time being
5 until we have some hard data to say that we have risks or
6 not -- can that be done at the local level with the Sutter
7 Maintenance Yard and the local levee maintaining agencies
8 to talk to the private property owners? And we're already
9 discussing things with Fish and Wildlife.

10 I think we ought to direct our staff to
11 understand what the easements are. They can work with the
12 DWR real estate folks. And get a -- I guess a
13 knowledgeable recommendation and an opinion on what the
14 authority is relative the federal government in particular
15 on this. I think if we have easements on private property
16 owners, that's relatively clear. The tough nut is the
17 federal government piece.

18 And then I think we ought to -- our staff ought
19 to review this plan, I think DWR staff ought to review the
20 plan, and we ought to get with Fish and Wildlife and say
21 that there's some -- if there are after review of the
22 plan -- there's some pieces of this that give us heartburn
23 and we'd like to work with you on it.

24 BOARD MEMBER RIE: Does anybody know when the
25 public hearing is for this plan?

1 SECRETARY DOHERTY: The final public hearing?

2 BOARD MEMBER RIE: Yes.

3 SECRETARY DOHERTY: They had three. They had one
4 in Willows, one in Colusa, and one in Yuba City. I
5 attended the one in Colusa. But when the final hearing
6 is, I don't know.

7 BOARD MEMBER RIE: Well, I would say we send some
8 staff to the hearing and present comments at the public
9 hearing. If we missed the comment period for written
10 comments, we can certainly show up at the public hearing.

11 PRESIDENT CARTER: So we need to touch bases with
12 Kevin Forester and find out what the status of the plan is
13 and get on record as to -- based on a cursory review, we
14 have some concerns. We need to do some more research to
15 find out if there are true technical issues.

16 MS. INDRIERI: Mr. Carter, I can help you with
17 the time frame that U.S. Fish and Wildlife is working in.

18 PRESIDENT CARTER: I'm sorry. Ms. Indrieri,
19 could you identify yourself for the record.

20 MS. INDRIERI: Ms. Indrieri from Family Water
21 Alliance.

22 I talked with Keith -- Kevin Forester on Tuesday
23 about the management plan and where our comment period
24 was. Like Lady Bug had said, it did officially close on
25 September the 12th. But he said his staff would not be

1 reviewing the comments for the next couple weeks. So it
2 seems like there would be time, especially maybe if some
3 phone calls were made, for appropriate state agencies to
4 still be able to weigh in.

5 BOARD MEMBER RIE: Yeah, that's a really good
6 idea. We need to get on that.

7 PRESIDENT CARTER: Okay. Emma.

8 BOARD MEMBER SUAREZ: Mr. President, I believe
9 you outlined four points there. And I think those --
10 those four sound very good to me in terms of starting some
11 direction in how to proceed with this issue. So, whether
12 it's just general recommendation to staff or just
13 something reflected in the minutes that we want these
14 things done, I think they -- I'd be very supportive of
15 that.

16 PRESIDENT CARTER: Okay.

17 SECRETARY DOHERTY: Well, I personally would like
18 to see us adopt a resolution. And then if there's some
19 things in there during our discussion we want strike out,
20 fine. But I think that's the step to go. I mean we've
21 had all this testimony today. It was a thoughtful piece
22 that was written. And it was just asking some of the same
23 things. It's asking for a 2D model, it's asking for a
24 peer review, it's asking us to require notification of
25 property owners.

1 So I'd like to see us accept the resolution as
2 presented. And if after discussion you want to strike
3 some things, well, let's do it.

4 PRESIDENT CARTER: So --

5 BOARD MEMBER BROWN: You make that motion?

6 SECRETARY DOHERTY: I will make that motion, yes.

7 PRESIDENT CARTER: Okay. We have a motion to
8 adopt the resolution -- the draft resolution that was
9 given to the Board.

10 Is there a second?

11 BOARD MEMBER BROWN: I'll second it.

12 PRESIDENT CARTER: Okay. We have a second.
13 Discussion?

14 BOARD MEMBER RIE: I think if we want to move
15 forward with this resolution, we should probably strike a
16 few things and add a few more.

17 PRESIDENT CARTER: Okay. Go for it.

18 BOARD MEMBER SUAREZ: Can I just -- legal counsel
19 hasn't reviewed the resolution. There is language here
20 that I have no idea whether it's accurate or not. There's
21 certainly language relating -- that seems to imply the
22 Department of Water Resources has not been fulfilling its
23 obligation under the state law regarding maintenance of
24 Sutter Bypass that I have a problem with.

25 So at the minimum -- I don't think we're anywhere

1 close to prepare -- counsel said she hadn't had a chance
2 to review this. DWR counsel hasn't had a chance to review
3 this. And these resolutions do have a legal import that
4 is worrisome to me.

5 SECRETARY DOHERTY: Ms. Cahill, didn't you have a
6 chance to review it?

7 LEGAL COUNSEL CAHILL: I had a chance to review
8 it very quickly and to ask to have eliminated some of the
9 worst provisions. But I can't say that I'm comfortable
10 with it even now.

11 BOARD MEMBER BROWN: Mr. Chairman.

12 I would hope that by the time a resolution came
13 to our Board for adoption, that it certainly had legal
14 review and was ready to go from that standpoint. And
15 otherwise I'd rather hold up on them until they are.

16 PRESIDENT CARTER: Okay. So are you withdrawing
17 your second then?

18 BOARD MEMBER BROWN: Well, I don't know that --
19 yeah, I think I will withdraw it.

20 But also I would like to add the caveat that if a
21 resolution in the future is presented to us, that it has
22 been reviewed by at least Legal and the appropriate staff.

23 SECRETARY DOHERTY: By our Legal. But if
24 somebody else's Legal wrote it --

25 BOARD MEMBER BROWN: Yes, by our Legal.

1 PRESIDENT CARTER: Okay. We have a motion before
2 us to approve -- to adopt the resolution. Is there a
3 second?

4 BOARD MEMBER RIE: I would be happy to second.
5 But there's probably five things that I would like to add
6 and two things I'd like to delete. So I don't know if --
7 I don't know if we want to sit here for another hour
8 discussing them or not.

9 PRESIDENT CARTER: I'd prefer not to. What I'd
10 prefer to do --

11 (Laughter.)

12 PRESIDENT CARTER: -- is to -- if it's okay, if
13 we can try and move forward on the four areas that I
14 mentioned: Transitioning to the 2D model; work at a local
15 level with the private property owners on the areas of
16 concern; have both our staff and DWR staff understand
17 these easements and authorities; we ought to comment on
18 the Fish and Wildlife plan. And a fifth one, ask our
19 staff to draft a resolution for consideration in the
20 November meeting, if that -- if that makes sense, as a
21 result of the work from the other four items.

22 SECRETARY DOHERTY: What was the fifth one?

23 PRESIDENT CARTER: The fifth one was to draft a
24 resolution, that could be adopted by the Board,
25 formalizing these four actions and anything else that

1 staff or -- that staff deems appropriate that the Board
2 ought to consider.

3 So those five things.

4 VICE-PRESIDENT HODGKINS: In effect, you've
5 addressed five things. And I think what you're saying -
6 and I'm trying to say this back - is we need staff and
7 counsel to work with DWR to find out, for instance, are
8 they -- we don't have any money for a 2D model, they
9 might -- are they willing to commit to go forward with a
10 2D model that could be used for maintenance? If they are,
11 give us a resolution that will in effect institutionalize
12 what our course of action is here as we move forward.

13 The 2D model, a big issue there is whether
14 anybody will fund it. Hopefully we will get comments out
15 of staff on the plan within two weeks. And you could put
16 in the resolution what those comments are.

17 I would like to ask that you add to the
18 resolution DWR and our counsel's best opinion -- I do not
19 want you to go ask the Corps, because we'll never get an
20 answer -- as to what is the criteria by which we know the
21 maintenance is adequate. That's critical for this Board.
22 And that's what you argue with Fish and Wildlife with if
23 you have to argue even. Is it the '57 profile, is it the
24 O&M manual, or is it the easement that basically says,
25 "Clear all the vegetation in here so water runs freely."?

1 What does "water run freely" mean in terms of maintaining
2 a flood control system? Does it mean free? Or does it
3 mean we have to get our design capacity?

4 What else did you have, Ben? You had five
5 things, and I only picked up three, the model -- you
6 didn't have the capacity, which is my issue.

7 PRESIDENT CARTER: Model, working at a local
8 level with the private property owners. And we will work
9 with the Fish and Wildlife Service through commenting and
10 their conservation plan. Understanding the easements.
11 And then the resolution. And I think the resolution
12 defining the criteria that articulates when the channel is
13 meeting the appropriate level of protection -- flood
14 protection, that's great.

15 VICE-PRESIDENT HODGKINS: Does that make sense?
16 It's still a little rough.

17 And you can all come back and see what we end up
18 with.

19 PRESIDENT CARTER: Ms. Sutton.

20 MS. SUTTON: Yes, Mrs. Sutton from Colusa County.

21 Perhaps one idea that could be considered is a
22 moratorium on the expansion of any further refuges or
23 wildlife areas in the Sutter Bypass until these ideas are
24 fully explored and you have the full understanding of
25 what's going on. Because certainly we wouldn't want to

1 put more problems in if we find that these are indeed
2 problems. So just perhaps another idea is to have a
3 moratorium on any further development of habitat areas
4 there until we assess it.

5 PRESIDENT CARTER: Okay. Thank you.

6 Mr. Butler.

7 SENIOR ENGINEER BUTLER: I would like to clarify
8 for Mr. Hodgkins that with the passage of the Governor's
9 budget, we received approximately \$2.8 million in
10 additional funding this year, of which I budgeted a
11 portion, I don't know recall the exact amount - I want to
12 say it's up to fifty to a hundred thousand dollars - for
13 professional consulting contracts, of which we could use a
14 portion of that funds to at least pay for part of some
15 seed money to get this 2D model off the ground.

16 So we do have money available. And I would be
17 happy to confirm how much that would be.

18 In addition, we could apply salary savings with
19 our unfilled positions that we were granted back through
20 July, which will now take time to fill. So I believe we
21 have sufficient component of our funding available to help
22 get this thing going.

23 VICE-PRESIDENT HODGKINS: I'm not sure if it's
24 adequate. But I mean that -- we'll work it out with DWR,
25 who's doing a bunch of modeling, got a bunch of people

1 under contract already. Can you get us something? Would
2 you do it? Would you agree?

3 PRESIDENT CARTER: Okay.

4 BOARD MEMBER RIE: President Carter, with regard
5 to the modeling, one of the things that I would have added
6 to the resolution was to go back and look at the model we
7 have. Mr. Swanson said we're very close. Nobody's ever
8 said which model it is.

9 EXECUTIVE OFFICER PUNIA: One dimensional.

10 BOARD MEMBER RIE: It's one dimensional what?
11 What program?

12 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

13 HEC-RAS.

14 BOARD MEMBER RIE: Okay. HEC-RAS is a very good
15 problem, you know. I don't see what's wrong with going
16 back and spending a little bit more time on the HEC-RAS.
17 Mr. Countryman mentioned that the cross-sections were a
18 quarter mile apart. I don't see why we couldn't go back
19 and add a few more cross-sections and work on this
20 HEC-RAS.

21 So it's just a thought to -- something to
22 consider. If it's cheaper, easier, if it's going to have
23 any results or if it's going to show the picture better,
24 you know, that's an opportunity. And I'm sure DWR staff
25 could do that relatively easily without going outside.

1 PRESIDENT CARTER: I heard that Mr. Countryman
2 was doing this pro bono, so money shouldn't be a problem.

3 (Laughter.)

4 BOARD MEMBER SUAREZ: You know, I heard that too.

5 (Laughter.)

6 PRESIDENT CARTER: All right. Ladies and
7 gentlemen, let's move on, if you please.

8 We need to have a five-minute break. Stand up,
9 dance around your chair. We'll recess for five minutes
10 and reconvene.

11 Thank you.

12 (Thereupon a recess was taken.)

13 PRESIDENT CARTER: Ladies and gentlemen, if I
14 could ask you to take your seats, we'll continue with our
15 marathon.

16 I want to make a couple process checks. We are
17 going to start off here now with Item 13, the Interim
18 Levee Design Criteria, with Mr. Mayer from DWR.

19 We are going to in the interests of time postpone
20 Item 14 to a future meeting.

21 We will consider Item 15, the AB 1147
22 regulations, assuming Ms. Wegener is still with us.

23 And we are going to be very abbreviated on the
24 remainder of the items on the agenda, 16 through 19.

25 And we'd like to adjourn by 6, if not earlier.

1 Okay?

2 I didn't want to put any pressure on you, Mr.
3 Mayer. But good afternoon. Welcome. And by the way,
4 congratulations on your selection on the National Levee
5 Safety Committee.

6 (Thereupon an overhead presentation was
7 Presented as follows.)

8 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:
9 Thank you, President Carter. And good evening.

10 (Laughter.)

11 PRESIDENT CARTER: Good night.

12 (Laughter.)

13 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

14 I'm Rod Mayer, Assistant Deputy Director for
15 FloodSAFE California. But I think I preferred the new
16 title bestowed on me this afternoon by Lady Bug, which is
17 Big Muckitymuck in DWR.

18 (Laughter.)

19 SECRETARY DOHERTY: That was complimentary.

20 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER: I
21 like it.

22 I'd like to talk to you -- it'll be a challenge
23 for me to do this quickly. It's about a 40-minute
24 presentation. I will do it quicker than that. But I will
25 do the best I can.

1 I'm going to talk to you about our draft interim
2 levee design criteria for urban and urbanizing areas.

3 --o0o--

4 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

5 Senate Bill 5, passed a year ago, requires that
6 urban areas must have by year 2015 adequate progress
7 toward achieving the 200-year level of protection. And
8 that needs to be done according to criteria approved or
9 developed by the Department of Water Resources. This
10 applies to the urban areas, that is, 10,000 people or more
11 in developed areas, and urbanizing areas, that is where
12 10,000 people will reside within a ten-year period. And
13 this applies to the Sacramento and San Joaquin watersheds.
14 The Tulare Lake basin is excluded from this. If they do
15 not have adequate progress by year 2015, no more
16 development is permitted or to be authorized within the
17 200-year floodplain and for those areas -- those urban
18 areas protected by project levees.

19 This adequate progress period may only last for
20 ten years, that is, until 2025, after which they must have
21 achieved the 200-year level of protection if they want to
22 continue to develop in the 200-year floodplain.

23 --o0o--

24 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

25 The Legislature wrestled with what's the

1 appropriate level of protection. And they considered
2 various levels, considering information such as this:
3 That if you have a 100-year level of protection, then over
4 a 30-year period, such as in a typical life of a mortgage,
5 you'd have a 26 percent chance or about a 1-in-4 chance of
6 exceeding that design during that 30-year period, and so
7 forth, with various levels of protection.

8 The debates range from we should have 100-year
9 level of protection as our standard - that's a national
10 standard - to as high as 500-year level of protection, or
11 maybe the standard project flood which is in the ballpark
12 of 500 years or maybe a little bit less.

13 The compromise was 200-year level of protection,
14 which means a 14 percent chance of exceeding design over a
15 30-year period.

16 --o0o--

17 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

18 And we have identified what are urban areas.
19 This is a different definition than in SB 5. These are
20 the urban areas per Prop 1(e), where if a project levee
21 fails, then 10,000 people or more would be flooded.

22 The urban area definition in SB 5 applies to
23 communities that are not even protected by project
24 facilities at all, not even protected by levees
25 necessarily.

1 --o0o--

2 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

3 We put out last year, in December 7th, the first
4 version of the draft interim criteria. And we proposed in
5 that two approaches to measuring what is a 200-year
6 standard. We said that either approach would be
7 acceptable to Department of Water Resources. One would be
8 the FEMA approach, with certain modifications, and the
9 other would be the Corps's approach, which uses risk and
10 uncertainty, with certain modifications.

11 And we took comments and we received comments.
12 We received a number of comments. I'm going to hit kind
13 of the bigger ones. One was we proposed whatever the
14 design surface that you come up with for your water
15 surface, we're developing new hydrology which is going to
16 for the first time explicitly address climate change. We
17 may do a good job at that. We may not do a good job at
18 that. That's a hard thing to do. But we're going to do
19 something about climate change, and we haven't done that
20 before, that's likely to drive up the water surface from
21 the hydrology that we have today.

22 We have not considered sea level rise previously.
23 And when you do, it's likely in the areas close to the
24 Delta that you're going to see an impact from sea level
25 rise. And it should be considered in the hydrology and

1 the hydraulics.

2 So there's on objection to requiring it at this
3 point.

4 There was another question concerning why we
5 would require something we call the top of levee check.
6 And this was a modification that required that levees be
7 checked with the water surface at the top of a levee to
8 ensure that they still have adequate integrity so they
9 won't fail from underseepage, seepage, or slope
10 instability.

11 We also proposed a higher than usual or
12 conventional factor of safety for landside slopes
13 stability of 1.5. That's a typical number that's required
14 for dams. And we thought that may be appropriate for
15 urban areas. The comment back was, "That's going to be
16 very expensive to meet. We suggest sticking with the
17 conventional 1.4 as used for levees."

18 And another, that we were interfering with FEMA
19 certification by setting not only our standard for the 200
20 but saying it applied for the 100. And we tend to agree.
21 We had no intention to interfere with FEMA certifications.

22 --o0o--

23 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

24 So I'll quickly go over what the FEMA approach
25 is. And it's a deterministic approach. That is, you do

1 your best to estimate what the various things are: The
2 amount of rainfall that's going to fall on the water shed;
3 how much is going to run off; and then how much is going
4 to hit the reservoir and how the reservoirs are going to
5 operate, and so forth; all the way down to estimating what
6 your expected water surface is for the 100-year flow. And
7 you typically assume very conservative -- or the most
8 conservative storm centering that you can find that's the
9 worst case situation for the levee system that you're
10 designing or evaluating. And it therefore becomes your
11 best estimate of a conservative 100-year water surface.
12 And you use that for your design. And then at least three
13 feet of freeboard is required above that, and your bridge
14 is four feet.

15 And then the slope stability and seepage analyses
16 are performed using that 100-year water surface. That's
17 your design water surface under the FEMA approach.

18 --o0o--

19 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

20 Under the Corps's approach, many of the
21 parameters that go into the analysis the Corps would also
22 try to estimate how uncertain they are about them. They
23 don't do it for all parameters. Ideally they would, but
24 that's too difficult. But many of the parameters,
25 especially the key ones, they try to estimate what is the

1 uncertainty or the air band around that and consider that
2 explicitly. So some parameters get uncertainty, some
3 don't. So in effect it become a conditional risk and
4 uncertainty or probabilistic approach hybridized with a
5 deterministic approach. They tend to use the most severe
6 storm centering. Don't necessarily have to, but the
7 tendency is to do that.

8 There's also typically an assumption about, like
9 with the deterministic FEMA approach, you need to assume
10 what's going to happen with the other levees in your
11 system. Are they going to fail? Are the upstream levees
12 going to fail and should you rely on that? Are they going
13 to act like weirs when water goes over the top of them?
14 What do you assume about that? Typically the Corps would
15 assume that those other levees do not fail and they would
16 act like weirs.

17 And then they develop various water surface
18 elevations that they have various levels of confidence in
19 or assurance. And a 50 percent assurance would be what
20 would be the expected water surface, which is very similar
21 to the deterministic approach.

22 And then with their uncertainty distributions
23 they're able to say there's a higher water surface that
24 we're 90 percent sure won't be exceeded and there's an
25 even higher one that's 95 percent we're sure that it won't

1 be exceeded. And they'll use these 90 and 95 percent
2 assurance water surfaces to do their design, to set the
3 levee crown elevation and to do the geotechnical analyses.

4 And then they'll also check against the 50
5 percent, or the expected water surface, and make sure that
6 they've got adequate freeboard, two-feet minimum,
7 typically be three-feet, and it depends on whether they're
8 using a 90 or 95 percent assurance water surface.

9 --o0o--

10 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

11 And all these approaches are documented in
12 various Corps manuals that are listed here. And even
13 FEMA's MT-2 forms that civil engineers use to file letters
14 of map revision, the instructions and details that refer
15 back to the engineering manuals prepared by the Corps,
16 they're on line on FEMA's website.

17 And we typically use a steady-state seepage for
18 the levee, factors of safety of 1.4 for landside slope
19 stability. And a key thing is what is the exit gradient
20 coming up at the toe for the seepage? You don't want to
21 have too much energy there, so you want these numbers to
22 be low. Point five is the maximum that's typically
23 allowed at a levee toe. And if it's higher than that,
24 then you need to build a seepage berm. And then .8 is the
25 maximum allowed near the toe of the seepage berm.

1 And, furthermore, in recent guidance in the
2 Corps's ETL 1110-2-570, which is their guidance on how to
3 certify levees so that they may be accredited by FEMA as
4 providing the base level or 100-year protection, the new
5 guidance by the Corps says you need to consider
6 earthquakes and seismic damage and vulnerability of your
7 levee system, and you should look at the 10 percent chance
8 in 50 years earthquake, which equates to a 475-year
9 earthquake.

10 And if a lot of damage is going to occur, then
11 they may not be able to certify to FEMA.

12 --o0o--

13 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

14 Now, one thing that levees in my opinion we
15 haven't done well, and we certainly haven't done
16 explicitly, is directly consider risk to life. The way
17 levees are planned, formulated and designed is really
18 based upon economics. And we maximize the levee height --
19 or optimize them to maximize the economic benefits. And
20 that's for protecting property. We don't put value on
21 human life. Consequently, human life doesn't directly
22 figure into the formulation or the design. And if you
23 think about it, if you want to protect human life behind
24 levees, a pretty good way to do it is to have a highly
25 reliable predictable levee. It could even fail. It's

1 okay if it fails or breaches if you know when that's going
2 to happen and it's going to happen in a controlled manner
3 and it's going to happen in a way that allows you adequate
4 time to evacuate. In many cases in their system where you
5 can forecast days ahead of where water surfaces are going
6 to be, and if you could do it well, you may be able to
7 deal with evacuation properly. On flashy streams, maybe
8 not.

9 So if you look at the various types of levee
10 designs, the most ideal for protecting life to least
11 ideal, of course the best would be the Dutch approach,
12 we'd make this thing so big, so high, so massive it will
13 never fail. Well, that of course provides very little
14 risk to life.

15 If you -- next down on the list, if you have flow
16 relief, when your design flow's exceeded and you have
17 bypasses or your system is outflanked and the water maybe
18 comes into the basin overland but not by breaking a levee,
19 that's a better situation with respect to life.

20 If you can accommodate overtopping, hardening the
21 backside, that perhaps is a good way too. Although we're
22 not real good at that and not very experienced at that and
23 it's challenging.

24 And the next would be they actually can fail, but
25 it fails from overtopping. And then of course once you're

1 at the top or below the top, there's a potential for
2 surprises. And surprises aren't good. You don't want
3 your levees -- really I don't think you want your levees
4 failing below the top. And certainly you don't want it
5 failing below the design stage. Because people tend to
6 think that the levee should be able to hold water above
7 the design stage and probably to the top. And they
8 continue to rely on that perhaps when they shouldn't.

9 And this is a similar concept to what we have in
10 building code for buildings. When civil engineers design
11 reinforced concrete beams, there's concrete and there's
12 reinforcing steel, and there's stresses in both. And we
13 make sure that the steel is going to fail before the
14 concrete. And the code requires it.

15 Why? Because steel fails slowly and ductilly and
16 stretches. Concrete fails quickly and brittlely. By
17 giving time and stretching and deformation, people can
18 have time to get out of harm's way. The same idea here.
19 If you have a levee scale from overtopping, it's more of a
20 ductile-like failure rather than a brittle failure.

21 --o0o--

22 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

23 So what are some of the key principles that are
24 in the draft interim criteria? It'll apply of course by
25 law to the urban and urbanizing areas. Either approach is

1 acceptable. However, clarifications are needed where
2 they're not real specific on some points that are key,
3 like what do you do about other levees in the system, what
4 do you assume? And some specific modifications.

5 So one of those is that we think levee design
6 should not rely on other levees to fail. If you designing
7 your urban levee, it's best to assume other levees
8 upstream aren't going to fail. It's okay to assume the
9 water goes over them and they act like weirs. But if you
10 assume they're going to fail, if your wrong, you're going
11 to get more water than you thought.

12 And that the criteria -- all the factors of
13 safety and exit gradients and everything shouldn't change
14 when you go from one level of protection to another. They
15 should be constant. And the only variable really is what
16 is the level I'm designing to?

17 So the levee failure should occur from
18 overtopping. We should consider climate change and sea
19 level rise and seismic risk.

20 --o0o--

21 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

22 So what do we do with this interim criteria? We
23 provide a choice of methodologies. We provide in
24 something that cuts the risk in half from the 100 year by
25 not changing anything except the level of protection. No

1 exit gradient criteria or anything else changes from the
2 100 year. We provide specific guidance on how to find
3 that design water surface, how to calculate it. And
4 specific guidance, for the first time I think, that levees
5 need to be designed to fail from overtopping, thereby
6 greatly increasing the protection for life or greatly
7 reducing the risk to human life. And guidance on how to
8 address seismic risk.

9 And the concern with seismic is twofold - and
10 I'll get into it - but it has to do with some levees are
11 working all the time, and we're very concerned about those
12 for seismic; levees that aren't working all the time,
13 which is most of the system, concerned about those too.
14 They're vulnerable to earthquake damage.

15 --o0o--

16 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

17 So what are those clarifications? We should use
18 the best available hydrology and hydraulic models. And in
19 most cases that's a comprehensive study model, especially
20 where it's been updated.

21 We should assume that the other urban and
22 urbanizing levee in the system have already been raised to
23 200-year plus 3 feet. So you're not assuming that any
24 weir flows are going to occur over those levees. Assume
25 that the non-urban levees, those rural levees, have been

1 restored to their design and authorized elevations where
2 they're perhaps below that elevation. Assume that the
3 other levees in the system don't fail for the 200-year
4 event. And we'd encourage increasing your design water
5 surface to account for new hydrology, climate change, so
6 forth.

7 And we have some specific modifications to those
8 existing FEMA and Corps procedures.

9 --o0o--

10 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

11 One would be, require an analysis with putting
12 water at the -- what we call the hydraulic top of levee.
13 And this hydraulic top of levee would be the expected
14 200-year water surface plus 3 feet, or the physical top of
15 levee, whichever is lower. And we define this term of
16 hydraulic top of levee and created it because there are a
17 few levees in this system that have an abundance of
18 freeboard, and we don't necessarily want people to have to
19 analyze water if there's seven feet of freeboard, which is
20 I think like the Marysville ring levee has lot of
21 freeboard on that order. We don't necessarily think they
22 should have to put water at the top of that levee. And we
23 don't want them to go out and degrade the levee just to
24 make the numbers work.

25 And we've provided specific factors of safety

1 that are recommended for the slope stability and the exit
2 gradients at the levee toe and the berm toe when water is
3 put at the hydraulic top of levee. And then we also
4 provide guidance on light soils, because these exit
5 gradients don't calculate correctly when you have light
6 soils and so we have factors of safety in the criteria for
7 light soils.

8 --o0o--

9 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

10 We also have one tweak in the Corps's approach
11 where we would say for the slope stability and the seepage
12 analyses always use the 90 percent assurance water
13 surface. The Corps would sometimes use the 95 percent.

14 And we also provide specific guidance on do a
15 seismic stability analysis with the 200-year earthquake,
16 not the 475-year earthquake, do it with a typical summer
17 water level and a typical winter water level. And when
18 you're doing remediation and improvements consider which
19 alternative is going to be more robust with respect to
20 seismic vulnerability and select that one unless it's cost
21 prohibitive to do so.

22 You need to evaluate that seismic damage to that
23 200-year event. And develop a response plan for how one
24 would quickly restore protection for that levee system
25 back to a moderate level. And we've chosen a ten-year

1 level. And I'll touch on why ten year. And that needs to
2 be done quickly, within a few months.

3 And if you can't restore your system, if it's
4 going to be so damaged by the earthquake that you couldn't
5 restore it in a few months, then probably need to do some
6 seismic remediation now or by the time you want to have
7 200-year certification.

8 And then those levees like in the Delta where
9 water's against them all the time, they're not
10 intermittent to the working levees, you should be able to
11 maintain that ten-year level of protection right during
12 the earthquake and right after the earthquake

13 --oOo--

14 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

15 This is the formula that we use to calculate risk
16 and chances of exceedance. So that chart -- that bar
17 chart I showed you earlier, like the second slide, this is
18 the formula you use to get those numbers. And when you
19 use it and you take a look at -- if we have a levee system
20 that provides 200-year protection, and if you have it for
21 50 years, which is typically the number we use when we
22 plan levee systems for the economics to justify them, and
23 that's also considered the useful life of a system
24 typically and after remediation would be expected, if you
25 have a 200-year system over a 50-year period, you have

1 about a 22 percent chance of exceeding your design.

2 If we want to stay with those same chances, and
3 if we assume that the earthquake would cause a lot of
4 damage, and you want to be able to restore that system
5 back to 200 year, it's probably going to take a few
6 years -- two, three years, depending on the extent of
7 damage. So over a two-to-three-year window if you want to
8 have it essentially the same risk as you did originally
9 with your levee system, you would have about a 10-year
10 protection, is what you'd need to have within a few
11 months. And then after a couple of years, three years,
12 hopefully you're back to 200 year.

13 --o0o--

14 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

15 So where are we now? We originally had this out
16 for 30 days for public comment posted on their FloodSAFE
17 website. A request came in to extend it another 30 days
18 and we have done that. We held a public workshop
19 yesterday right here. And we're going to be taking
20 comments through October 30th.

21 --o0o--

22 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

23 And there are three ways to provide comments.
24 You can do it by Email to the FloodSAFE website or mail to
25 this address. Or if you were here yesterday, you could

1 have left comments.

2 --o0o--

3 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

4 There's a few other things I want to touch on
5 quickly.

6 We're hitting the most basic things that
7 engineers deal with when it comes to designing levees.
8 But there's many other things we need to consider, such as
9 what's the allowable levee vegetation? Can you certify or
10 would it be appropriate to certify a levee with lots of
11 trees on it or right next to it? We need to start
12 grappling with that issue.

13 Same with pipe inverts. In Title 23 there is
14 guidance about pipe inverts. That's a really good
15 starting point. We should take a look at that and maybe
16 see if it needs any tweaking for this 200-year level.

17 One method for one flood protection system. I
18 think we want to be careful and not have one levee system
19 serving Natomas Basin and letting engineers and agencies
20 choose and to say, "Well, on this part of my levee system
21 I'm going to use the FEMA approach because that gives me
22 the numbers I like. And on the other part I'm going to
23 use the Corps's approach because that gives me the numbers
24 I like there." Probably need to force that it's -- you
25 pick one and go with it for the entire system.

1 What do you do about adjacent urban areas? We
2 have an urban area on this side of the river and then an
3 urban area on this side of the river. Do we want to have
4 consistency in the method that they choose and the way
5 they design them so that there's parity? I think that's
6 an issue we need to grapple with.

7 We could get into more detail on seismic analysis
8 than what we've done, and I think we should consider that.
9 And maybe well do it, maybe not. But maybe we should be
10 more specific on the amount of geotechnical data that goes
11 into this that the designs are based upon. There's a lot
12 of guidance there now. Maybe it's adequate, maybe not. I
13 don't think we're fully complying with it in every way
14 currently. And so we need to see if it needs to be
15 tweaked.

16 Once your system's been certified to 200 year and
17 a 120-year flood comes along and it doesn't do so well and
18 you have problems, what do you about that? So here's the
19 idea of performance-based investigations. See how it
20 performs. And there needs to be follow-up when things
21 like that happen. And maybe there's some guidance that
22 should be provided.

23 Need to deal with sea level rise, as I've
24 mentioned.

25 We don't have anything specific on erosion.

1 There's been a lot of new developments on how to analyze
2 erosion through our Levee Evaluations Program, and I think
3 some of their best thinking should be folded into here.

4 And, finally, everything I've talked about is
5 technical. But perhaps there should be some procedural
6 criteria as well that the local agencies will use when
7 they certify that they've achieved 200-year protection.

8 So one thought might be that it would be a
9 periodic certification. It would only last, say, ten
10 years like the Corps's certifications do.

11 Another aspect might be that there'd be
12 independent expert review each time it's recertified.

13 So we're making sure that all the latest
14 engineering developments and criteria and considerations
15 are incorporated into certifications as they go on.

16 --o0o--

17 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

18 And that concludes my presentation. And I got
19 through it quicker than I thought.

20 Are there any questions?

21 PRESIDENT CARTER: Bravo.

22 Questions for Mr. Mayer?

23 VICE-PRESIDENT HODGKINS: Rod, this is interim
24 criteria.

25 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

1 Yes.

2 VICE-PRESIDENT HODGKINS: If somebody goes
3 through and does an upgrade on the interim criteria, they
4 meet the 200-year certification, but then somewhere down
5 the line here there's new criteria and it doesn't meet it,
6 what happens?

7 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

8 Well, I think we need to be very careful about
9 setting up a paradigm that local agencies are always
10 chasing something. And we don't want to do that. So
11 we're mindful -- and we say it right in here, that we're
12 going to be very mindful that people are planning and
13 building to criteria that we're establishing now, and that
14 we want to be careful about making any changes and
15 thoughtfully. And perhaps when we decide we actually
16 really need to do this, that there be time periods
17 established that are very reasonable for folks to meet.

18 We also say this is interim because we have this
19 hope - it's not a real strong hope but there is a hope
20 -that FEMA and the Corps and us will be able to work
21 together over the next couple of years and agree upon one
22 methodology. And perhaps even this National Committee on
23 Levee Safety would be an appropriate forum for such an
24 activity.

25 VICE-PRESIDENT HODGKINS: And then my other

1 question I already mentioned to you.

2 Under 408 the Corps so far is insisting that a
3 risk and uncertainty analysis be submitted to them. This
4 doesn't necessarily require that a risk and uncertainty
5 analysis be done. How do we bring those two things so
6 that we don't get stuck doing a lot of risk and
7 uncertainty analysis for the Corps?

8 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

9 I'm not sure I follow that question. But let me
10 try and answer it.

11 I don't think the design criteria necessarily has
12 to address risk and uncertainty analysis. But we could
13 put that on the list and have that discussion. I do
14 think -- for hydraulic impacts. I do think hydraulic
15 impacts need to be analyzed, simply as a matter of
16 complying with CEQA, for one thing. And I don't think the
17 Board would be very comfortable approving permits or 408
18 actions without seeing some reasonable hydraulic analysis,
19 whether it includes risk and uncertainty or it doesn't.

20 But that's not necessarily a measure of whether
21 or not your levee system can perform to the 200-year
22 standard. To me that's a little different question.
23 That's have I impacted somebody by what I've done? And if
24 so, do I need to mitigate?

25 VICE-PRESIDENT HODGKINS: Okay.

1 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

2 Now with respect to -- okay.

3 VICE-PRESIDENT HODGKINS: So somebody may have to
4 do a risk and uncertainty analysis for hydraulic impacts
5 even though they're designing to FEMA?

6 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER: I
7 think so. And the Corps will require what the Corps will
8 require for a 408. I think the awkward position we find
9 ourselves in now is that the Corps is saying they need a
10 risk and uncertainty approach to hydraulic impact analysis
11 and one does not exist. The Corps is working with us to
12 develop one. In my opinion, it's got a long ways to go
13 before it's really ready to be depended upon by folks as
14 an appropriate method. We're working together with them
15 on that though.

16 VICE-PRESIDENT HODGKINS: Good.

17 PRESIDENT CARTER: Well, I think you all have
18 done a wonderful job in terms of flushing out a lot of the
19 issues and addressing some of them and keeping the
20 unresolved ones on the table at this point.

21 I regret that we did not have your presentation
22 earlier in the day, because this is the kind of
23 information that I think the people in the public, the
24 people who were here earlier today really need to hear and
25 be able to comment on.

1 I understand you've had some public meetings,
2 input sessions and whatnot on all of these that they were
3 open to the public and --

4 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

5 Yesterday. We had one, and it was yesterday
6 right here.

7 We had maybe 30 or 40 in attendance. And of
8 course it's posted on the website. And Emails went out to
9 everybody that receives FloodSAFE Email that this is
10 occurring.

11 And of course if the Board has any comments, we'd
12 very much appreciate and value them.

13 And our other partner, the Corps of Engineers, is
14 commenting and has drafted comments at this point. And we
15 look forward to dealing with those as well.

16 I think there will be some tweaks as a result of
17 comments we've received so far. Maybe not major tweaks,
18 but I -- I don't think it will be exactly the way it was
19 just presented to you by the time we finalize it.

20 And then the next step I believe will be start
21 working in a collaborative forum dealing with all the
22 other issues, under the auspices of the Central Valley
23 Flood Protection Planning process.

24 PRESIDENT CARTER: Okay. Wonderful. Great work.

25 Any other questions for Mr. Mayer?

1 Staff?

2 SECRETARY DOHERTY: So, good. That's why you got
3 to be the Big Muckitymuck.

4 (Laughter.)

5 PRESIDENT CARTER: Thank you very much. Thank
6 you for moving through it quickly.

7 DWR FloodSAFE ASSISTANT DEPUTY DIRECTOR MAYER:

8 Okay. You're welcome.

9 PRESIDENT CARTER: Okay. Ladies and gentlemen,
10 as I mentioned right after the break, we're postponing
11 Item 14, which is an informational item from our staff on
12 the San Joaquin Drainage District map preparation. We'll
13 get that update next month.

14 And we'll move into Item 15, the revised AB 1147
15 regulations.

16 And, Ms. Wegener, I apologize we're so far
17 behind. I appreciate your patience. Would also
18 appreciate your moving through your material quickly if
19 you could.

20 DWR STATEWIDE GRANTS BRANCH CHIEF WEGENER: Thank
21 you. And I actually was quite impressed with how patience
22 and thoroughly you discussed the previous items. It was
23 lovely to watch.

24 In view of this -- in view of the late hour
25 though, I'll dispense with the PowerPoint presentation

1 that we prepared and I'll talk very quickly, hopefully
2 thoroughly enough to remind you about AB 1147 regulations.

3 We were here to talk about AB 1147 regulations a
4 couple of months ago when we were out for a public comment
5 period. These are the regulations that have to do with
6 the state cost share for federally authorized flood
7 control projects.

8 So federally authorized flood control projects
9 are funded for the State part at a baseline 50 percent.
10 And then there's a -- what we could call discretionary or
11 an additional possible 20 percent if projects meet certain
12 objectives. And those objectives are recreation, open
13 space, habitat, meeting State facilities and
14 transportation or water supply. Or if the project goes
15 through an impoverished area or if it promotes one of
16 those, then it can get additional State cost share. We
17 got comments and responded to them, including the comments
18 of the Board and we revised the regulations. We're now
19 out for another shorter public comment period of 15 days.
20 And we wanted to come back and just ask you if you have
21 any comments, to let you know what's going on with these
22 regulations. If there are no substantial comments, we
23 will then go to Office of Administrative Law and ask for
24 their -- ask for a decision.

25 The revisions that we made -- the major revisions

1 that we made, one of them had to do with the definition of
2 the "open space". We clarified that definition to include
3 specifically rangeland, in response to one of the comments
4 that the Board had made. And we also stated that -- prior
5 we had said that a project would need to meet more than
6 one of those five objectives that I mentioned earlier. In
7 response to comments, we've said that a project if they
8 meet a single objective could be -- could qualify for that
9 additional 20 percent of funding.

10 Other things we did were to clarify definitions
11 and to make the package just a little bit tighter and a
12 little bit more -- make the regs a little bit more
13 understandable. We also clarified the process for
14 approving of the entire -- for getting the project to the
15 Legislature for approval of the state cost share.

16 So that's the very quick overview. It may be --
17 I'll be happy to go into detail. But given the hour, I
18 didn't want to take extra time.

19 So are there questions? Or shall I go into
20 anything in a little more detail?

21 PRESIDENT CARTER: Are there any questions? Do
22 we require more detail?

23 VICE-PRESIDENT HODGKINS: No, I think we can read
24 them.

25 Does anybody want to comment?

1 No.

2 PRESIDENT CARTER: Okay. Very good.

3 Thank you very, very much.

4 DWR STATEWIDE GRANTS BRANCH CHIEF WEGENER: Thank
5 you.

6 PRESIDENT CARTER: I appreciate your patience and
7 time.

8 All right. Ladies and gentlemen, next item is
9 Item 8, our consent calendar for today. And I need to do
10 that before we lose a quorum.

11 So we'll entertain a motion to --

12 BOARD MEMBER BROWN: Mr. Chairman I've read that
13 same calendar, and I'll make a motion to approve it. I
14 have no objections to it.

15 PRESIDENT CARTER: Motion to approve.

16 Is there a second?

17 Is there a second?

18 Do we have a second?

19 VICE-PRESIDENT HODGKINS: There are three staff
20 reports I think where the recommendation's to approve.
21 There is no Corps letter and none was anticipated by the
22 Board meeting. So to me it's unclear whether we are
23 approving those subject to the Corps letter or not. And
24 so I was going to ask that you pull those so that we could
25 make it clear.

1 PRESIDENT CARTER: It's unclear from the staff
2 report as to whether those were going to be subject to?

3 VICE-PRESIDENT HODGKINS: Yes.

4 PRESIDENT CARTER: They each have draft permits
5 attached, don't they?

6 SENIOR ENGINEER BUTLER: Yes.

7 PRESIDENT CARTER: And I believe each of those
8 has a condition that --

9 EXECUTIVE OFFICER PUNIA: John, our staff
10 position is that we will issue them when we get the Corps
11 letter?

12 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

13 Yes, we're asking the Board to approve them upon
14 a condition. Because normally we state if we expect the
15 Corps letter by this meeting, that due to recent history,
16 we haven't been receiving the letters. And so to be
17 exact, we've been -- we now quote in there that we do not
18 expect it because we have no notifications that they're
19 going to be -- to expect it by today.

20 VICE-PRESIDENT HODGKINS: Okay. I --

21 PRESIDENT CARTER: I've looked at A and B. They
22 both have the final condition in each of the permits this
23 is subject to a Corps letter attached.

24 Do they all say that?

25 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: No.

1 PRESIDENT CARTER: They do not?

2 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

3 There is one that has an undated Corps letter. I
4 think that's item C.

5 PRESIDENT CARTER: It says, "Permittee shall
6 comply with the conditions set forth in the letter from
7 the Department of Army, dated October XX, 08, which is
8 attached." They all have that. I think they all have
9 a -- the three that I've seen.

10 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

11 Basically though within the staff report it does
12 state that a Corps letter was received undated though.

13 SECRETARY DOHERTY: Does not affect the federally
14 constructed project.

15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

16 That's correct.

17 SECRETARY DOHERTY: Well, then I'll second the
18 motion.

19 You made the motion, John?

20 BOARD MEMBER BROWN: Yes, ma'am.

21 SECRETARY DOHERTY: I'll second it.

22 LEGAL COUNSEL CAHILL: So the motion is that they
23 will be subject to the Corps letters, conditioned on
24 receipt of the Corps letters?

25 BOARD MEMBER BROWN: No, the motion was to go

1 ahead and adopt them. And those that had subject to Corps
2 approval would be subject to Corps approval.

3 LEGAL COUNSEL CAHILL: I don't understand.

4 VICE-PRESIDENT HODGKINS: It's in effect a
5 condition that I did not -- I don't read the permits.
6 Sorry, guys. But there's a condition in the permit that
7 says it's subject to a Corps letter.

8 SECRETARY DOHERTY: The first one I think it
9 is --

10 VICE-PRESIDENT HODGKINS: That will be received
11 at some unknown day. I would like to see that in the
12 staff report. But that's only my personal preference.

13 PRESIDENT CARTER: Actually we pulled E. So the
14 items on the consent calendar are A, B, C, D, and F.

15 BOARD MEMBER BROWN: Which ones are of concern?

16 PRESIDENT CARTER: I looked at all of those draft
17 permits, and it appeared to me that all those draft
18 permits had a provision, it was either the last or the
19 second to the last in the draft permit, that said language
20 to the effect --

21 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: --
22 that the letter is attached.

23 PRESIDENT CARTER: -- that the letter from the
24 U.S. Army -- the Department of Army is attached.

25 SECRETARY DOHERTY: Well --

1 PRESIDENT CARTER: So that means that they are
2 subject to -- "shall comply with all the conditions set
3 forth in the letter from the Department of Army dated" --
4 whatever date it is when they get it -- "which is attached
5 to this permit as an exhibit."

6 So I think if you're asking us to move on the
7 consent calendar, Mr. Brown, all the -- all of the items
8 on the consent calendar before us today have that
9 condition. So they are subject to Corps concurrence.

10 BOARD MEMBER BROWN: That was my opinion.

11 PRESIDENT CARTER: Okay. And that's --

12 SECRETARY DOHERTY: Yes.

13 PRESIDENT CARTER: Okay.

14 LEGAL COUNSEL CAHILL: But you won't want to
15 issue them until you have that Corps letter.

16 PRESIDENT CARTER: Right.

17 LEGAL COUNSEL CAHILL: So you really are
18 approving them conditioned on getting the letter?

19 BOARD MEMBER BROWN: That's correct.

20 LEGAL COUNSEL CAHILL: Okay.

21 BOARD MEMBER BROWN: That's the motion.

22 PRESIDENT CARTER: Okay. And that's the second,
23 correct?

24 SECRETARY DOHERTY: Yes.

25 PRESIDENT CARTER: Okay. Mr. Punia, would you

1 call the roll, please.

2 EXECUTIVE OFFICER PUNIA: Board Member Butch
3 Hodgkins?

4 VICE-PRESIDENT HODGKINS: Yes.

5 EXECUTIVE OFFICER PUNIA: Board Member John
6 Brown?

7 BOARD MEMBER BROWN: Yes.

8 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

9 SECRETARY DOHERTY: Yes.

10 EXECUTIVE OFFICER PUNIA: Board President Ben
11 Carter?

12 PRESIDENT CARTER: Yes.

13 Okay. Motion carries unanimously.

14 And we will hear Item 8E at a future date.

15 Okay. What's remaining on our agenda, ladies and
16 gentlemen, are the last board reports and administrative
17 items.

18 Is there anything that Board staff or Board
19 members wish to bring before us that can't wait?

20 BOARD MEMBER BROWN: I had a meeting last month
21 with the Auburn Dam Council on water supply issues and the
22 status of Auburn Dam, which Dave Sterling attended. No
23 issue before this Board that I'm aware of, now or
24 expected.

25 PRESIDENT CARTER: Okay. Anything else?

1 VICE-PRESIDENT HODGKINS: I've been attending the
2 Lower Bypass Plan Forum meetings. The agendas are up on a
3 couple of websites: Delta Planning Commission and then
4 there's another one, I think Yolo Bypass dot org. And
5 right now we're going through history.

6 PRESIDENT CARTER: Okay. Anything else?

7 SECRETARY DOHERTY: Some day when you're all
8 aboard I'll tell you about the two tours I've been on the
9 last two months.

10 PRESIDENT CARTER: Okay.

11 SECRETARY DOHERTY: But that's only when we're
12 bored.

13 PRESIDENT CARTER: Film at 11.

14 Mr. Punia, anything you have to communicate to
15 the Board right now?

16 EXECUTIVE OFFICER PUNIA: I'll be very brief.
17 And a few items I just want to bring to the Board's
18 attention. The Memorandum of Understanding the Board
19 approved last Board meeting, with a minor change in the
20 real estate delegation. That minor change is not
21 acceptable to the Department of Water Resources, so our
22 legal counsel is working with the DWR legal counsel to
23 reach a consensus on it. So we may have to bring it back
24 if we don't reach a consensus.

25 Budget, as I think Eric mentioned --

1 PRESIDENT CARTER: Well, I can just add something
2 to that. Ms. Cahill is working with DWR on that.

3 Is there any -- have we had any discussions since
4 the beginning of the week?

5 LEGAL COUNSEL CAHILL: No, I haven't had a chance
6 to. I'll be talking to Ward Tabor early next week.

7 PRESIDENT CARTER: Okay. It's the opinion of the
8 staff and the Executive Committee that this issue should
9 not be a problem, the language should stand as was
10 proposed. And should we not be able to reach consensus
11 with DWR, we are prepared to escalate it up the chain of
12 command. So that's going to be our strategy at this
13 point. We're going to try and reach agreement. If we
14 can't, we'll -- I'll be talking to Director Snow and go
15 from there.

16 EXECUTIVE OFFICER PUNIA: On the budget, I think
17 Eric briefly mentioned we got \$1.8 million in the General
18 Fund and five positions and we got additional 1 million
19 and up to five positions for Proposition 1E and AB 4.
20 That's the good news.

21 The rough thing is that we have to find a space
22 for our new hires. So we are working on the space
23 planning and the hiring process. So we will be moving
24 aggressively on that, but it still takes time.

25 Board President Ben Carter, myself, and Gary

1 Hester met with Colonel Chapman and the Corps staff to
2 work with them so that we can expedite processing of these
3 permits. They have asked some things for us to modify in
4 our process, so we will implement those changes. And they
5 have also mentioned that they are -- they will hire an
6 additional person in the Operations Branch and then
7 additional person for hydraulic and geotechnical review.
8 So there is some hope down the line that they will
9 expedite the processing. But it's still a long effort to
10 continue this processing the permit. There's a
11 substantial delay which is costing some money and delay to
12 the applicants for the construction of the projects.

13 Board member salaries. We are almost at the
14 final stage. I'm hoping that you will see your checks
15 before the year is over. We have asked you to submit the
16 forms. And we will submit it to our Personnel Office as
17 soon as possible.

18 There's a change in the DWR management. Dave
19 Gutierrez has gone back to his permanent position as Chief
20 of the Division of Safety of Dams and Mark Cohen is the
21 new Deputy. The Division of Flood Management will report
22 to Mark Cohen.

23 DWR -- we discussed with DWR staff, and they
24 recommended that we should nominate another member to the
25 Delta Subcommittee for the Board to work with Mike

1 Miramazaheri, Dave Miraz on the Delta issue. And based
2 upon my discussion, Board Member Emma Suarez is willing to
3 step up and work with Teri Rie. If that's acceptable to
4 the Board, then we will nominate -- that in addition to
5 Board Member Teri Rie, Emma Suarez has become the member
6 of that committee.

7 PRESIDENT CARTER: And I've had discussions with
8 both of them and they're both willing to serve. And so
9 I've made that appointment.

10 And I will also recommend that we should make
11 another subcommittee to work with Steve Bradley and Ken
12 Kirby to continue our involvement in the development of
13 the Central Valley Flood Protection Plan. And I will
14 recommend that Board Member Butch Hodgkins and Board
15 Member John Brown be part of that committee, so that we
16 can continue our coordination with the Department of Water
17 Resources.

18 PRESIDENT CARTER: And Butch and John had the
19 preliminary meeting with them. You guys willing to
20 continue in that?

21 VICE-PRESIDENT HODGKINS: Absolutely, yes.

22 BOARD MEMBER BROWN: Yes.

23 EXECUTIVE OFFICER PUNIA: And that will be
24 helpful.

25 PRESIDENT CARTER: So it is done.

1 EXECUTIVE OFFICER PUNIA: Okay. Bear Creek.

2 Gary, if you can brief the Board quickly where we
3 are on addressing the encroachments on the Bear Creek and
4 Calaveras River.

5 CHIEF ENGINEER HESTER: We had a deadline of
6 September 30th to begin enforcement action on property
7 owners who had not responded to our letter that went out
8 in August requesting information on whether they would
9 apply for an encroachment permit for the existing
10 encroachments and remove any fences that were not going to
11 be approved.

12 We sent out one letter on September 30th, have
13 not heard back from that individual. They basically have
14 30 days to contact the Board or they waive their right to
15 a hearing. They can request a hearing within that 30-day
16 period.

17 We continue to work with the property owners on
18 giving them information about how to fill out the
19 application forms. We have a few. We don't have as many
20 as we would like to at this point. Our schedule is still
21 to take as many as we can to the November Board meeting,
22 and then continue to bring them to the December Board
23 meeting if they come in after the time that we can
24 actually put them on the -- we intend to put them on the
25 consent calendar in November as we get them.

1 BOARD MEMBER BROWN: Is that Calaveras and Bear
2 Creek?

3 CHIEF ENGINEER HESTER: That is Calaveras and
4 Bear Creek, that's correct.

5 BOARD MEMBER BROWN: Okay. They know that the
6 Board's considering a hearing on this?

7 CHIEF ENGINEER HESTER: The person who got the
8 letter was notified of their rights to request a hearing.

9 The other property owners who are willing to
10 cooperate do not have the full information about what the
11 Board hearing would entail. If they voluntarily comply,
12 they really don't need to have that kind of detail.

13 BOARD MEMBER BROWN: Okay. So we don't know
14 whether we're going to have a hearing on that or not, a
15 specific hearing?

16 CHIEF ENGINEER HESTER: That's correct.

17 EXECUTIVE OFFICER PUNIA: I think I'm going to --
18 considering the time, I have another item, but I will
19 update the Board by the biweekly report rather than taking
20 additional time.

21 Thank you.

22 PRESIDENT CARTER: Okay. Very good.

23 We do have a draft future agenda that came in
24 your package today. If you would like to review that.
25 And if there are items that you'd like to change on that,

1 either through additions or deletions, if you would let
2 Jay know between now and ten days from now, that would be
3 helpful. Then we can go ahead and formulate the agenda
4 for November.

5 There are a few items that we discussed today
6 that were either continued or postponed, and we'll
7 endeavor to include those in the November agenda.

8 If there's nothing else -- no other comments?

9 We're adjourned.

10 Thank you.

11 (Thereupon the Central Valley Flood

12 Protection Board meeting adjourned

13 at 5:52 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Central Valley Flood Protection Board meeting
7 was reported in shorthand by me, James F. Peters, a
8 Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 27th day of October, 2008.

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22 JAMES F. PETERS, CSR, RPR

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